

10-7-2014

# Walco, Inc. v. County of Idaho Clerk's Record v. 1 Dckt. 42296

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LA

In the <b>Supreme Court</b> of the State of Idaho	
Walco Inc.	
Plaintiff	and
Appellant	
vs.	
County of Idaho, and	
Simmons Sanitation Service, Inc.	
Defendants	and
Respondents	
Appealed from the District Court of Second Judicial District for the State of Idaho, in and for Idaho County	
Hon. <u>John Stegner</u> District Judge	
Dennis Charney	
Attorney ___ for Appellant	
Bentley Stromberg (Idaho County)	
David Risley (Simmons Sanitation)	
Attorney ___ for Respondent	
Filed this ___ day of ___, 20__	
42296	
By	Clerk
	Deputy

IN THE SUPREME COURT OF THE STATE OF IDAHO

Walco, Inc.  
Plaintiff/Appellant

vs.

SUPREME COURT  
NO. 42296-2014

County of Idaho  
And Simmons Sanitations Service, Inc,  
Defendants/Respondents.

\*\*\*\*\*

CLERK'S RECORD ON APPEAL

\*\*\*\*\*

Appeal from the District Court of the Second Judicial District  
of the State of Idaho, in and for the County of Idaho.

HONORABLE John Stegner

\*\*\*\*\*

Dennis M. Charney  
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Eagle, ID 83616

Bentley Stromberg  
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Lewiston, ID 83501

# TABLE OF CONTENTS

Table of Contents .....	1
Index .....	2
Register of Actions .....	3
Complaint and Demand for Jury Trial .....	9
Exhibits to Complaint .....	21
Answer of Defendant Idaho County .....	66
Answer to Complaint of Defendant Simmons Sanitation Service, Inc. ....	73
Order Setting Trial and Scheduling Order .....	80
Marietta Holman's Affidavit in Support of Motion for Change of Venue .	84
Declaration of Kathy M. Ackerman .....	95
Defendant Idaho County's Motion for Summary Judgment .....	450
Declaration of R. Skipper Brandt .....	453
Declaration of James A. Chmelik .....	457
Declaration of Counsel .....	461
Defendant Idaho County's Memorandum in Support of Motion for Summary Judgment .....	465
Defendant Simmons Sanitation Service, Inc.'s Memorandum in Support of Motion for Summary Judgment .....	490
Affidavit of Robert Simmons .....	5058
Joinder of Defendant Simmons Sanitation Service, Inc. in Idaho County's Motion for Summary Judgment .....	511
Defendant Simmons Sanitation Service, Inc.'s Motion for Summary Judgment .....	513
Declaration of James M. Rockwell .....	515
Plaintiff's Reply to County of Idaho's Opposition to Plaintiff's Motion to Continue and Plaintiff's Response in Opposition to protective Order ..	519
Declaration of Dennis M. Charney .....	529
Amended Declaration of James M. Rockwell .....	532
Amended Declaration of James A. Chmelik .....	536
Amended Declaration of R. Skipper Brandt .....	540
Amended Declaration of Kathy M. Ackerman .....	544
Defendant Idaho County's Amended Memorandum in Support of Motion for Summary Judgment .....	552
Defendant Idaho County's Notice of Filing of Amended Summary Judgment Brief and Declarations .....	578
Supplemental Declaration of Kathy M. Ackerman .....	627
Supplemental Declaration of Counsel .....	954
Second Supplemental Declaration of Kathy M. Ackerman .....	1142
Dennis M. Charney's Declaration in Support of Plaintiff's Motion for Summary Judgment .....	1198
Plaintiff's Memorandum in Support of Cross-Motion for Summary Judgment	1226
Notice of Hearing .....	1243
Plaintiff's Cross-Motion for Summary Judgment .....	1246
Second Supplemental Declaration of Counsel .....	1249
Third Supplemental Declaration of Kathy M. Ackerman .....	1413

Defendant's Idaho County's Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment.....	1423
Defendant Simmons Sanitation Service, Inc.'s Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment.....	1462
Joinder of Defendant Simmons Sanitation Service, Inc. in Defendant Idaho County's Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment.....	1478
Defendant Idaho County's Reply to Walco's Opposition to Defendants' Motion for Summary judgment.....	1480
Plaintiff's Response in Opposition to County of Idaho's and Simmons' Motions for Summary Judgment.....	1504
Plaintiff's Memorandum in Support of Cross-Motion for Summary Judgment.....	1532
Cheryl Gammon's Declaration.....	1552
Defendant Simmons Sanitation Service, Inc.'s Reply in Memorandum in Support of Motion for Summary Judgment.....	1594
Minutes (12/20/13).....	1723
Notice of Hearing w/Notice of Procedures for Telephonic Appearances Regarding Court Call.....	1725
Plaintiff's Motion to Reconsider Granting Defendant's Motion for Summary Judgment.....	1728
Defendant Simmons Sanitation Service, Inc.'s Memorandum in Opposition to Plaintiff's Motion for Reconsideration.....	1742
Defendant Idaho County's Response to Walco's Motion to Reconsider Grant of Summary Judgment.....	1758
Notice of Hearing w/Notice of Procedures for Telephonic Appearances Regarding Court Call: Second Revised Date/Time.....	1781
Plaintiff's Reply to Defendants' Response to Plaintiff's Motion to Reconsider Granting Defendants' Motion for Summary Judgment.....	1784
Plaintiff's Supplement to Motion to Reconsider.....	1798
Memorandum Decision Granting Summary Judgment to Defendants.....	1820
Judgment.....	1836
Notice of Appeal.....	1838
Clerk's Certificate Re: Exhibits.....	1844
Clerk's Certificate.....	1845
Amended Judgment.....	1847

# INDEX

Affidavit of Robert Simmons .....	5058
Amended Declaration of James A. Chmelik .....	536
Amended Declaration of James M. Rockwell .....	532
Amended Declaration of Kathy M. Ackerman .....	544
Amended Declaration of R. Skipper Brandt .....	540
Amended Judgment .....	1847
Answer of Defendant Idaho County .....	66
Answer to Complaint of Defendant Simmons Sanitation Service, Inc. ....	73
Cheryl Gammon's Declaration .....	1552
Clerk's Certificate Re: Exhibits .....	1844
Clerk's Certificate .....	1845
Complaint and Demand for Jury Trial .....	9
Declaration of Counsel .....	461
Declaration of Dennis M. Charney .....	529
Declaration of James A. Chmelik .....	457
Declaration of James M. Rockwell .....	515
Declaration of Kathy M. Ackerman .....	95
Declaration of R. Skipper Brandt .....	453
Defendant Idaho County's Amended Memorandum in Support of Motion for Summary Judgment .....	552
Defendant Idaho County's Memorandum in Support of Motion for Summary Judgment .....	465
Defendant Idaho County's Motion for Summary Judgment .....	450
Defendant Idaho County's Notice of Filing of Amended Summary Judgment Brief and Declarations .....	578
Defendant Idaho County's Reply to Walco's Opposition to Defendants' Motion for Summary judgment .....	1480
Defendant Idaho County's Response to Walco's Motion to Reconsider Grant of Summary Judgment .....	1758
Defendant Simmons Sanitation Service, Inc.'s Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment .....	1462
Defendant Simmons Sanitation Service, Inc.'s Memorandum in Opposition to Plaintiff's Motion for Reconsideration .....	1742
Defendant Simmons Sanitation Service, Inc.'s Memorandum in Support of Motion for Summary Judgment .....	490
Defendant Simmons Sanitation Service, Inc.'s Motion for Summary Judgment .....	513
Defendant Simmons Sanitation Service, Inc.'s Reply in Memorandum in Support of Motion for Summary Judgment .....	1594
Defendant's Idaho County's Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment .....	1423
Dennis M. Charney's Declaration in Support of Plaintiff's Motion for Summary Judgment .....	1198

Exhibits to Complaint.....	21
Index .....	2
Joinder of Defendant Simmons Sanitation Service, Inc. in Defendant Idaho County's Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment.....	1478
Joinder of Defendant Simmons Sanitation Service, Inc. in Idaho County's Motion for Summary Judgment.....	511
Judgment.....	1836
Marietta Holman's Affidavit in Support of Motion for Change of Venue.	84
Memorandum Decision Granting Summary Judgment to Defendants.....	1820
Minutes (12/20/13).....	1723
Notice of Appeal.....	1838
Notice of Hearing w/Notice of Procedures for Telephonic Appearances Regarding Court Call.....	1725
Notice of Hearing w/Notice of Procedures for Telephonic Appearances Regarding Court Call: Second Revised Date/Time.....	1781
Notice of Hearing.....	1243
Order Setting Trial and Scheduling Order.....	80
Plaintiff's Cross-Motion for Summary Judgment.....	1246
Plaintiff's Memorandum in Support of Cross-Motion for Summary Judgment	1226
Plaintiff's Memorandum in Support of Cross-Motion for Summary Judgment	1532
Plaintiff's Motion to Reconsider Granting Defendant's Motion for Summary Judgment.....	1728
Plaintiff's Reply to County of Idaho's Opposition to Plaintiff's Motion to Continue and Plaintiff's Response in Opposition to protective Order..	519
Plaintiff's Reply to Defendants' Response to Plaintiff's Motion to Reconsider Granting Defendants' Motion for Summary Judgment.....	1784
Plaintiff's Response in Opposition to County of Idaho's and Simmons' Motions for Summary Judgment.....	1504
Plaintiff's Supplement to Motion to Reconsider.....	1798
Register of Actions.....	3
Second Supplemental Declaration of Counsel.....	1249
Second Supplemental Declaration of Kathy M. Ackerman.....	1142
Supplemental Declaration of Counsel.....	954
Supplemental Declaration of Kathy M. Ackerman.....	627
Table of Contents .....	1
Third Supplemental Declaration of Kathy M. Ackerman.....	1413

Date: 7/30/2014

Sec Judicial District Court - Idaho County

User: KATHYJ

Time: 04:50 PM

ROA Report

Page 1 of 6

Case: CV-2013-0042360 Current Judge: John Stegner

Walco Inc vs. Idaho County, etal.

Walco Inc vs. Idaho County, Simmons Sanitationservice, Inc

Date	Code	User	Judge
3/25/2013	NCOC	HALL	New Case Filed - Other Claims
		HALL	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Charney, Dennis M (attorney for Walco Inc) Receipt number: 0148636 Dated: 3/25/2013 Amount: \$96.00 (Check) For: Walco Inc (plaintiff)
	COMP	HALL	Complaint and Demand for Jury Trial
	SMIS	HALL	Summons Issued x3
3/29/2013	DISF	CLARK	Disqualification Of Judge - Self
4/2/2013		KATHYJ	Notice of Appearance Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: David Risley Receipt number: 0148796 Dated: 4/3/2013 Amount: \$66.00 (Check) For: Simmons Sanitationservice, Inc, (defendant)
	ACCP	KATHYJ	Acceptance Of Service
4/3/2013	MISC	KATHYJ	Exhibits to Complaint
	ORDR	KATHYJ	Order Assigning Judge
4/11/2013	AFSR	KATHYJ	Affidavit Of Service (served Secretary of State on 4/2/13)
	AFSR	KATHYJ	Affidavit Of Service (served Idaho County on 3/29/13)
4/17/2013	ANSW	KATHYJ	Answer of Defendant Idaho County
4/23/2013	NOTS	KATHYJ	Notice of Service
	ORDR	KATHYJ	Order Setting Planning and Scheduling Conference
5/3/2013	ANSW	CLARK	Answer to Complaint of Defendant Simmons Sanitation Service, Inc
	NOTS	CLARK	Notice of Service Regarding Plaintiffs; First Set of Discovery Requests to Idaho County
	NOTS	CLARK	Notice of Service Regarding Plaintiffs' First Set of Discovery Requests to Simmons Sanitation Services, Inc
5/22/2013	HRSC	KATHYJ	Hearing Scheduled (Pretrial 01/27/2014 02:00 PM) in Latah County
	HRSC	KATHYJ	Hearing Scheduled (Jury Trial 02/24/2014 09:00 AM) should last all week
	ORDR	KATHYJ	Order Setting Trial and Scheudling Order
5/30/2013	NOTS	KATHYJ	Notice of Service Regarding Plaintiffs' Answers to Idaho OCounty's First Set of Interrogatories and Requests for Production
6/14/2013	NOTS	KATHYJ	Notice of Service
8/1/2013	MISC	KATHYJ	Plaintiff's Witness List



Walco Inc vs. Idaho County, Simmons Sanitationservice, Inc

Date	Code	User		Judge
9/13/2013	NOTC	KATHYJ	Notice of Deposition (James Rockwell)	John Stegner
	NOTC	KATHYJ	Notice of Deposition (Jim Chmelik)	John Stegner
	NOTC	KATHYJ	Notice of Deposition (Robert Simmons)	John Stegner
	NOTC	KATHYJ	Notice of Deposition (Skip Brandt)	John Stegner
9/17/2013	MOTN	KATHYJ	Plaintiff's Motion for Chagne of Venue	John Stegner
	MEMO	KATHYJ	Plaintiff's Memorandum in Support of Motion for Change of Venue	John Stegner
	AFFD	KATHYJ	Marietta Holman's Affidavit in Support of Motion for Change of Venue	John Stegner
9/27/2013	AFSR	KATHYJ	Affidavit Of Service (x3)	John Stegner
	NHRG	KATHYJ	Notice Of Hearing	John Stegner
	HRSC	KATHYJ	Hearing Scheduled (Motion 11/07/2013 04:00 PM) in Latah County	John Stegner
9/30/2013	MOTN	KATHYJ	Defendant Idaho COUnty's Motion for Summary Judgment	John Stegner
	MEMO	KATHYJ	Defendant Idaho County's Memorandum in Support of Motion for Summary Judgment	John Stegner
	MISC	KATHYJ	Declaration of Kathy M. Ackerman	John Stegner
	MISC	KATHYJ	Declaration of R. Skipper Brandt	John Stegner
	MISC	KATHYJ	Declaration of James A. Chmelik	John Stegner
	MISC	KATHYJ	Declaration of Counsel	John Stegner
	NHRG	KATHYJ	Notice Of Hearing	John Stegner
	HRSC	KATHYJ	Hearing Scheduled (Summary Judgment 10/28/2013 10:00 AM) in Latah County	John Stegner
10/1/2013	MEMO	KATHYJ	Defendant Simmons Sanitation Service, Inc.'s Memorandum in Support of motion for Summary Judgment	John Stegner
	AFFD	KATHYJ	Affidavit of Robert Simmons	John Stegner
	MISC	KATHYJ	Joinder of Defendant Simmons Sanitation Service, Inc. in Idaho County's Motion for Summary Judgment	John Stegner
	MOTN	KATHYJ	Defendant Simmons Sanitation Service, Inc.'s Motion for Summary Judgment	John Stegner
	MISC	KATHYJ	Declaration of James M. Rockwell	John Stegner
	NHRG	KATHYJ	Notice Of Hearing Re: Defendant Simmons Sanitation Service, Inc.'s Motion for Summary Judgment	John Stegner
10/2/2013	MISC	KATHYJ	Defendant Simmons Sanitation Service, Inc.'s Witness List	John Stegner
	MISC	KATHYJ	Defendant Idaho County's Witness Disclosure	John Stegner
10/4/2013	MOTN	KATHYJ	Plaintiff's Motion to Vacate and Continue Summary Judgment Hearing and Time Extension to file Responsive Pleadings	John Stegner

Walco Inc vs. Idaho County, Simmons Sanitationservice, Inc

Date	Code	User	Judge
10/4/2013	AFFD	KATHYJ	Affidavit of Dennis M. Charney in Support of Plaintiff's Motion to Vacate and Continue Summary Judgment Hearing and Time Extension to File Responsive Pleadings
	MEMO	KATHYJ	Plaintiff's Memorandum in Support of Motion to Vacate and Continue Summary Judgment Hearing and Time Extension to File Responsive Pleadings
10/7/2013	NHRG	KATHYJ	Modified Notice Of Hearing
10/9/2013	MOTN	KATHYJ	Defendant Simmons Sanitation Service, Inc.'s Motion for Protective Order
	MEMO	KATHYJ	Joinder of Defendant Simmons Sanitation Service, Inc. in Idaho County's Memorandum in Opposition to Plaintiff's Motion to Vacate and Continue Summary Judgment Proceedings
	MEMO	KATHYJ	Defendant Simmons Sanitation Service, Inc.'s Reply Memorandum and Joinder in Opposition to Plaintiff's Motion to vacate and Continue Summary Judgment Hearing and Time Extension to File Responsive Pleadings
	NHRG	KATHYJ	Notice Of Telephonic Hearing re: Defendant Simmons Sanitation Service, Inc.'s Motion for Protective Order
	MISC	KATHYJ	Plaintiff's Reply to County of Idaho's Opposition to Plaintiff's Motion to Continue and Plaintiff's Response in Opposition to Protective Order
10/10/2013	MISC	KATHYJ	Declaration of Dennis Charney
	DCHH	KATHYJ	District Court Hearing Held Court Reporter: Keith Evans Number of Transcription Pages for this hearing estimated: Less than 100 pages
10/11/2013	MEMO	KATHYJ	Defendant Idaho County's Memorandum in Opposition to Plaintiff's Motion to Vacate and Continue Summary Judgment Proceedings
	MOTN	KATHYJ	Defendant Idaho County's Motion for Protective Order
	MISC	KATHYJ	Declaration of Counsel
	NHRG	KATHYJ	Notice Of Telephonic Hearing
10/16/2013	NOTS	KATHYJ	Notice of Service Re: Plaintiff's Second Set of Discovery Requests to County of Idaho
10/17/2013	NOTS	KATHYJ	Notice of Service Re: Plaintiff's Second Set of Discovery Requests to Simmons Sanitation Service, Inc.
	NOTC	KATHYJ	Notice of Taking Deposition Upon Oral Examination of Marietta Holman

Walco Inc vs. Idaho County, Simmons Sanitationservice, Inc

Date	Code	User		Judge
10/17/2013	NOTC	KATHYJ	Notice of Taking Deposition Upon Oral Examination of Patrick Holman	John Stegner
10/22/2013	NOTC	KATHYJ	Notice of Taking Deposition Upon Oral Examination of Patrick Holman	John Stegner
	NOTC	KATHYJ	Notice of Taking Deposition Upon Oral Examination of Marietta Holman	John Stegner
10/24/2013	HRVC	KATHYJ	Hearing result for Summary Judgment scheduled on 10/28/2013 10:00 AM: Hearing Vacated in Latah County	John Stegner
	HRSC	KATHYJ	Hearing Scheduled (Summary Judgment 12/20/2013 10:00 AM) in Lewiston	John Stegner
	ORDR	KATHYJ	Order Granting Motion to Continue Summary Judgment, Denying Motion for Protective Order and Scheduling Motion for Summary Judgment	John Stegner
11/1/2013	NOTS	KATHYJ	Notice of Service	John Stegner
	MISC	KATHYJ	Defendant Idaho County's Notice of Filing of Amended Summary Judgment Brief and Declarations	John Stegner
	MEMO	KATHYJ	Defendant Idaho County's Amended Memorandum in Support of Motion for Summary Judgment	John Stegner
	MISC	KATHYJ	Amended Declaration of Kathy M. Ackerman	John Stegner
	MISC	KATHYJ	Amended Declaration of R. Skipper Brandt	John Stegner
	MISC	KATHYJ	Amended Declaration of James A. Chmelik	John Stegner
	MISC	KATHYJ	Amended Declaration of James M. Rockwell	John Stegner
	MISC	KATHYJ	Supplemental Declaration of Kathy M. Ackerman	John Stegner
11/14/2013	NOTS	KATHYJ	Notice of Service of Discovery	John Stegner
11/18/2013	NOTS	KATHYJ	Notice of Service	John Stegner
	NOTS	KATHYJ	Notice of Service of Discovery	John Stegner
	MISC	KATHYJ	Second Supplemental Declaration of Kathy M. Ackerman	John Stegner
	MISC	KATHYJ	Supplemental Declaration of Counsel	John Stegner
11/22/2013	MOTN	KATHYJ	Plaintiff's Cross-Motion for Summary Judgment	John Stegner
	MEMO	KATHYJ	Plaintiff's Memorandum in Support of Cross-Motion for Summary Judgment	John Stegner
	MISC	KATHYJ	Dennis M. Charney's Declaration in Support of Plaintiff's Motion for Summary Judgment	John Stegner
	NHRG	KATHYJ	Notice Of Hearing	John Stegner
12/9/2013	MISC	KATHYJ	Second Supplemental Declaration of Counsel	John Stegner
	MISC	KATHYJ	Defendant Idaho County's Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment	John Stegner

Walco Inc vs. Idaho County, Simmons Sanitationservice, Inc

Date	Code	User	Judge
12/9/2013	MISC	KATHYJ	Third Supplemental Declaraion of Kathy M. Ackerman
	MISC	KATHYJ	Joinder of Defendant Simmons Sanitation Service, Inc. in Defendant Idaho County's Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment
	MISC	KATHYJ	Defendant Simmons Sanitation Service, Inc.'s Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment
12/16/2013	MISC	KATHYJ	Plaintiff's Response in Opposition to County of Idaho's and Simmons' Motions for Summary Judgment
	MISC	KATHYJ	Cheryl Gammon's Declaration
	MEMO	KATHYJ	Plaintiff's Memorandum in Support of Cross-Motion for Sumary Judgment
	MISC	KATHYJ	Defendant Idaho County's Reply to Walco's Opposition to Defendants' Motion for Summary Judgment
	MEMO	KATHYJ	Defendant Simmons Sanitation Service, Inc.'s Reply Memorandum in Support of Motion for Summary Judgment
12/20/2013	HRHD	KATHYJ	Hearing Held in Latah County
	HRHD	KATHYJ	Hearing result for Summary Judgment scheduled on 12/20/2013 10:00 AM: Hearing Held in Lewiston
1/3/2014	NHRG	KATHYJ	Notice Of Hearing w/Notice of Procedures for Telephonic Appearances Regarding Court Call
	HRSC	KATHYJ	Hearing Scheduled (Motion 01/21/2014 10:30 AM)
1/6/2014	MOTN	KATHYJ	Plaintiff's Motion to Reconsider Granting Defendant's Motion for Summary Judgment
1/9/2014	NHRG	KATHYJ	Notice Of Hearing w/Notice of Procedures for Telephonic Appearances Regarding Court Call: Revised Date/Time
1/15/2014	ORDR	ZIMMER	Order Vacating Pretrial Conference and Jury Trial
	HRVC	ZIMMER	Hearing result for Pretrial scheduled on 01/27/2014 02:00 PM: Hearing Vacated in Latah County (order)
	HRVC	ZIMMER	Hearing result for Jury Trial scheduled on 02/24/2014 09:00 AM: Hearing Vacated should last all week (order)
2/18/2014	MEMO	KATHYJ	Defendant Simmons Sanitation Service, Inc.'s Memorandum in Opposition to Plaintiff's Motion for Reconsideration
	MISC	KATHYJ	Defendant Idaho County's Response to Walco's Motion to Reconsider Grant of Summary Judgment

Date: 7/30/2014

Time: 04:50 PM

Page 6 of 6

Sec Judicial District Court - Idaho County

User: KATHYJ

ROA Report

Case: CV-2013-0042360 Current Judge: John Stegner

Walco Inc vs. Idaho County, etal.

Walco Inc vs. Idaho County, Simmons Sanitationservice, Inc

Date	Code	User	Judge
2/21/2014	NHRG	KATHYJ	Notice Of Hearing w/Notice of Procedures for Telephonic Appearances Regarding Court Call: Second Revised Date/Time John Stegner
3/20/2014	MISC	KATHYJ	Plaintiff's Reply to Defendants' Response to Plaintiff's Motion to Reconsider Granting Motion for Summary Judgment John Stegner
4/7/2014	HRHD	KATHYJ	Hearing Held in Latah County John Stegner
4/11/2014	MOTN	KATHYJ	Plaintiff's Supplement to Motion to Reconsider John Stegner
5/29/2014	DEOP	KATHYJ	Memorandum Decision Granting Summary Judgment to Defendants John Stegner
	JDMT	KATHYJ	Judgment John Stegner
	CDIS	KATHYJ	CIVIL DISPOSITION John Stegner
6/11/2014	MEMO	KATHYJ	Defendant Idaho County's Memorandum of Costs John Stegner
6/12/2014	MEMO	KATHYJ	Memorandum of Attorneys' Fees and Costs John Stegner
6/30/2014		KATHYJ	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Charney, Dennis M (attorney for Walco Inc) Receipt number: 0155310 Dated: 7/1/2014 Amount: \$109.00 (Check) For: Walco Inc (plaintiff) John Stegner
7/1/2014	BNDC	KATHYJ	Bond Posted - Cash (Receipt 155312 Dated 7/1/2014 for 100.00) John Stegner
7/10/2014	MEMO	KATHYJ	Memorandum in Oppsoition to Defendant Simmons' Request for Attorneys' Fees John Stegner
7/15/2014	MISC	CLARK	Defendant Idaho County's Request for Additional Transcript and Record John Stegner
7/23/2014	NHRG	KATHYJ	Notice Of Telephonic Hearing Re: Defendant Simmons Sanitation Service, Inc.'s Memorandum of Attorneys' Fees and Costs John Stegner
7/25/2014	BNDC	KATHYJ	Bond Posted - Cash (Receipt 155709 Dated 7/25/2014 for 330.00) John Stegner

DOCKETED

DENNIS M. CHARNEY, ISB #4610  
CHARNEY AND ASSOCIATES, PLLC  
1191 East Iron Eagle Drive  
Eagle, ID 83616  
Telephone: (208) 938-9500  
Facsimile: (208) 938-9504

Attorney for Plaintiff

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 10 O'CLOCK M.

MAR 25 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho corporation,  
Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision of  
the State of Idaho; and  
SIMMONS SANITATION SERVICE, INC., an  
Idaho corporation,  
Defendants.

Case No.

CV 42360

COMPLAINT AND DEMAND FOR JURY  
TRIAL

Plaintiff, Walco, Inc., by and through its attorney of record, Dennis M. Charney, of  
Charney & Associates, PLLC, for its complaint, alleges as follows:

STATUS OF PARTIES

1. Status of Plaintiff. Walco, Inc., (hereinafter referred to as "Walco") is an Idaho corporation located at 1206 South Hall St., Grangeville, Idaho 83530. It is an Idaho County solid waste franchise and has been serving the citizens of Idaho County for almost 50 years.

2. Status of Defendant, County of Idaho. Idaho County is a political subdivision of the State of Idaho having jurisdiction and authority to make solid waste management decisions in

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

the unincorporated and incorporated areas of the County of Idaho, through the Board of Commissioners, the governing body.

3. Status of Defendant, Simmons Sanitation Services, Inc. Simmons Sanitation Services, Inc., (hereinafter referred to as "Simmons") is an Idaho corporation located at 3230 Hwy 162, Kamiah, ID 83536, with a mailing address of Robert Simmons, P.O. Box 1523, Kamiah, ID 83536.

### JURISDICTION AND VENUE

4. Jurisdiction. Under Idaho Code §6-914, the district court shall have jurisdiction over any action brought under the Idaho Tort Claims Act. Thus, jurisdiction lies in the District Court of the Second Judicial District of the State of Idaho as the claim arises against a political subdivision within the Second Judicial District. Additionally, as to the Claim against Simmons Sanitation, this court has jurisdiction because the dispute between the parties arises in Idaho, and the amount in controversy exceeds \$10,000, the exact amount to be determined.

5. Venue. Under Idaho Code § 6-915, venue is proper in Idaho County because actions against a political subdivision or its employee shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located. The cause of action arose in Idaho County and the political subdivision is located in Idaho County. Additionally, as to the Claim against Simmons Sanitation, venue is proper in Idaho County because the acts giving rise to the Claim occurred in Idaho County, Idaho. By making this venue allegation for the initial filing Walco reserves the right to move for a change of venue if it determines said request is consistent with Plaintiff's right to have a fair trial.

### GENERAL ALLEGATIONS

6. Walco is an Idaho County solid waste franchise. It has provided solid waste services for Idaho County for nearly 50 years.

7. In early 2012, Walco and Idaho County exclusively negotiated terms for a renewal contract for solid waste disposal covering the unincorporated areas of Idaho County.

8. Walco and Idaho County reached an impasse due to the insistence of the County that Plaintiff fund its unprofitable recycling program

9. Thus, Walco suggested that Idaho County put the contract up for bid so a true market assessment regarding the value of the contract could be determined.

10. Although I.C. § 31-4403(6) does not require competitive bidding when a County forms a contract, such is allowed and Idaho county elected to follow that process.

11. In the fall of 2012, the County and Board published a request for proposal ("RFP") regarding the solid waste contract. The RFP contained many requirements. A true and accurate copy of the RFP is attached as Exhibit A.

12. While RFP's may or not be in the form of solicitation for competitive bids, the RFP at issue here was in the form of solicitation for competitive bids.

13. The Idaho County Solid Waste System is a public work under statute. I.C. § 31-4402 legislates that "the provisions of chapter 10, title 31, Idaho Code, are hereby made applicable for the acquisition of solid waste disposal systems and a solid waste disposal system is declared to be a public building within the definition of chapter 10, title 31, Idaho Code." Under



chapter 10, a contract regarding such "shall be let subject to the provisions of chapter 28, title 67, Idaho Code."

14. The competitive bid process requires that the County follow specific protocol. For public works, when the County is concerned with more than the lowest bid, it must follow a two-step process wherein the contractors submit the requisite information first. No cost bids are made. From that information, the County is to select those proposals that are responsive. Those selected contractors, then, are asked to submit a bid.

15. The prequalification standards are premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the political subdivision, available nonfinancial resources, equipment and personnel as they relate to the subject project, and overall performance history based upon a contractor's entire body of work." I.C. § 67-2805(3)(b)(i). Under the wording of the statute, the list is exclusive, not illustrative. In addition, when the political subdivision requests qualifications statements from prospective bidders under Category B, "[s]uch request must include the standards for evaluating the qualifications of prospective bidders." Id.

16. Although the county required numerous evaluation criteria, it did not include a standard for evaluating qualifications, and it required the cost bid at the same time as the other information.

17. Walco and Simmons Sanitation submitted bid proposals. They were the only bidders.

18. Walco submitted a responsive bid that was complete in all respects. It detailed its bid proposal within the multi-page proposal. Because Walco had been successfully servicing the unincorporated areas of Idaho County covered by this contract for almost 50 years, the proposal

included significant trade secret information. This was known to the Defendants. A true and accurate copy of the bid is attached as Exhibit B.

19. Walco's bid demonstrated that it had a transfer station located in Idaho County. This in-county location was an important consideration in the County's RFP and is required by Idaho County Ordinance 55, Section 11, B.1.

20. Simmons Sanitation submitted a bid that was not responsive. It was an incomplete bid that failed to satisfy the bid proposal in nearly all respects. It was a one-page document that contained nothing more than a monthly base price. By information and belief, no Simmons Sanitation trade secrets were divulged in that document. A true and accurate copy of the bid is attached as Exhibit C.

21. Further, the Simmons' bid was, on its' face, the more expensive bid.

22. The Board, however, treated the Simmons bid as if it was the lower bid and complete and rejected the Walco bid as if it were higher and incomplete.

23. The information submitted in response to the bid by Walco was not a public record and was exempt from disclosure pursuant to Idaho Code 9-340D (1) (a) and (b).

24. Even though said information was clearly proprietary, and clearly should not have been made available to the public, *and especially a competing bidder*, the County and Board disclosed said information to Simmons in an effort to assist him with respect to the rehabilitation of his bid and in the ongoing negotiation of the contract terms.

25. Walco asked the commission, several times, for an opportunity to meet and discuss the contract. It expressed concern with the bidding process. Plaintiff was flatly rejected. Walco was prepared to offer the same service at a price much lower than Simmons but the commissioners refused to even listen. Instead, the County offered up all of Walco's information

to Simmons and allowed Simmons the opportunity to rehabilitate his otherwise defective bid with all of Walco's proprietary information.

26. The Board did so to prevent Walco from being able to fairly compete for an extension of its existing contract.

27. The Board, and Simmons, illegally utilizing Walco's proprietary information, created a contract that appeared to satisfy the bid proposal, and appeared to be a lower cost. They did so to create the public illusion that Simmons was the better deal. In actuality, the contract is far more expensive and far less convenient for the citizens of Idaho County.

28. Further, the contract entered into exceeded the legal duration of this type of contract. The contract signed is a ten-year contract. Under Idaho County Ordinance No. 12, the Board was only permitted to enter into a five-year contract. This ordinance has never been impliedly or expressly repealed.

29. The Board signed a contract that illegally doubled the permissible term in order to prevent Walco and future Boards from negotiating a contract. The Board did so to retaliate against Walco and out of political cronyism.

30. The actions of the Board have caused Walco, Inc., as well as the citizens of Idaho County, to suffer significant monetary damages.

31. The actions taken against Walco were retaliatory, designed to prevent Walco from fairly competing for an extension of its' contract and designed to ensure that a political ally of the Board would receive a contract to which it was not otherwise entitled.

32. Further, upon information and belief, Simmons Sanitation requested and received Walco's Proposed Bid on January 24, 2013 by a Public Records Request. Thus, it continues to rely on Walco's proprietary information for its daily operations and future proposal writing.

COUNT ONE

Tortious Interference with a Prospective Economic Advantage

33. The Plaintiffs incorporate and re-allege the above paragraphs as if fully set forth herein.

34. A valid economic expectancy existed for Walco.

35. Walco had served the County by providing sanitation services for almost fifty years. When the contract was close to expiration Idaho County and Walco reached an impasse because Walco did not want to fund a recycling program that was not capable of sustaining itself. The County, based on Walco's suggestion, published a bid proposal.

36. The County had knowledge that Walco wanted to continue to provide the sanitation service because Walco submitted a detailed bid in support of this desire.

37. Once the County published the bid proposal, Walco had the right to fairly compete and to have its trade secrets protected.

38. Idaho County intentionally interfered inducing termination of Walco's expectancy.

39. Idaho County disclosed Walco's trade secrets and information to the competitor who then used it to negotiate a price that would appear to be lower than Walco's.

40. Idaho County also refused to speak with Walco during the ongoing bid and negotiation process. Those actions demonstrate the County's intent to interfere with Walco's expectancy.

41. The interference was wrongful by some measure, beyond the fact of the interference itself. Idaho County had a duty of non-interference and interfered by using a wrongful means that in fact caused injury to Walco's business relationship.

42. Additionally, it was wrongful because it violated and continues to violate both the Public Records Act and the Trade Secrets Act as detailed in Count Two below.

43. Additionally, Idaho County violated the processes for competitive bidding legislated in I.C. § 67-2805.

44. Once Idaho County opened the process up to competitive bidding via the Request for Proposal, Idaho County could procure a contract for solid waste with a bidder submitting the lowest bid price complying with bidding procedures and meeting the specifications for the services sought to be procured.

45. It had a duty to structure a fair competitive bidding process under I.C. § 67-2805. Instead, it used a one-step process, did not offer terms of evaluation, and treated Simmon's nonresponsive bid as if it met the qualification factors when it did not. Further, it did not provide the explanation necessary under law that a County must provide to losing bidders. Rather than explain why it chose the higher bidder, it continues to argue that it chose the lowest bidder. Moreover, by gaining Walco's bid initially, it used that bid information and proposed contract as a guideline for creating a final contract with Simmons that appeared to be better than what Walco had proposed. Under the two-step process, Simmons' proposal should have initially been rejected for non-responsiveness leaving the Walco bid as the lone responsive one qualifying for bidding.

46. Idaho County issued a Request for Proposal that required bidders to meet many criteria.

47. The company it chose, Simmons Sanitation, did not submit the lowest bid nor did it comply with bidding procedures nor did it meet the specifications for the services sought to be procured.

48. Nonetheless, Idaho County said in its answer to Walco's tort claim that Simmons Sanitation was the lowest bidder, did comply with bidding procedures and met the specifications for the services sought. In fact, the entire process was a sham. After Walco suggested that the contract be put out for bid, the County never intended to negotiate with Walco. Instead, by publishing the RFP the County designed a process that was intended to convince Walco to disclose its best numbers so those numbers could be provided to Simmons by the County.

49. Further, Idaho County's actions were wrongful because it formed a contract with a competitor wherein the contract terms violated County ordinances.

50. It contracted with Simmons Sanitation for a period of 10 years when Idaho County Ordinance 12, limits the terms of sanitation contracts to terms of 5 years.

51. Idaho County Ordinance 55 requires Idaho County residents to use only Transfer stations located "throughout the County [defined as Idaho County]," but the contract with Simmons Sanitations allows Simmons to locate a transfer station in Lewis OR Idaho County. (Solid Waste Collection Agreement Simmons Sanitation Service, V.5.1 p. 5).

52. The resulting damage to Walco, whose expectancy was disrupted, is in excess of the jurisdictional minimum of this Court. Walco will establish the precise amount of damages according to proof at trial but asserts that, over the ten year term of the contract, its damages exceed \$1,200,000.

## COUNT TWO

### Misappropriation of Trade Secret in Violation of the Trade Secrets Act and Public Records Act

53. Defendant Idaho County breached a duty to maintain the secrecy of Walco's proprietary business operations outlined in the Walco bid proposal.

54. Thus, Idaho County and Simmons Sanitation misappropriated Walco's trade secrets because Idaho County disclosed the trade secrets and Idaho County and Simmons Sanitation used the trade secrets of Walco without express or implied consent by Walco.

55. At the time of disclosure and use, Idaho County and Simmons Sanitation knew or had reason to know that its knowledge of Walco's trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

56. The misappropriated trade secrets were information that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

57. The trade secrets were exempt from disclosure by a public agency according to chapter 5, title 9, Idaho Code.

58. Idaho County and Simmons Sanitation continue to willfully and maliciously misappropriate Walco's trade secrets.

59. Simmons Sanitation requested and was formally provided the Walco Bid Proposal on January 24, 2013. On information and belief it requested such in order to gain the entirety of Walco's trade secrets and fill in any gaps that the County did not divulge. This is an ongoing misappropriation by the County and Simmons because the trade secrets allow Simmons to make

business decisions that Walco learned over the years. Alternatively, it is believed Simmons did so to create the appearance that Simmons was not in possession of Walco's information prior to the award of the contract in the late fall of 2012.

60. Further, should Simmons fail to successfully fulfill its contractual duties, Idaho County could look to Walco to take Simmons' place under I.C. § 67-2802(2). Simmons' use of the Walco trade secrets to establish already proven successful daily operating systems virtually guarantees that Simmons will not fail and thus has been and will be unjustly enriched.

61. The resulting damage to Walco is in excess of the jurisdictional minimum of this Court. Walco will establish the precise amount of damages according to proof at trial but reasonable believes that Simmons and the County are jointly liable for damages at least in the amount of \$1,200,000 over the ten year term.

#### **DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury as to all issues triable by jury under Idaho Rules of Civil Procedure 38(b).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in its favor and against Idaho County as follows:

1. Awarding Walco damages in the amount of at least \$1,200,000, the exact amount to be proven at trial;
2. For the Plaintiff's reasonable costs and attorney's fees pursuant to Idaho Code § 6-918A, § 12-117 and §12-120.



3. For any such other and further relief as the Court deems just and proper.

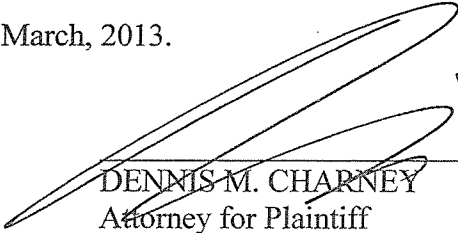
WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in its favor and against Idaho County and Simmons Sanitation Services, Inc. as follows:

1. For money damages in the amount of at least \$1,200,000, the exact amount to be proven at trial. This amount, under Idaho Code § 48-803, will be based on the actual loss caused by the misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized use of a trade secret. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (1) of this section.

2. For the Plaintiff's reasonable costs and attorney's fees pursuant to Idaho Code §12-117, §12-120 and §12-121.

3. For any such other and further relief as the Court deems just and proper.

DATED this 21<sup>st</sup> day of March, 2013.



DENNIS M. CHARNEY  
Attorney for Plaintiff

DENNIS M. CHARNEY, ISB #4610  
CHARNEY AND ASSOCIATES, PLLC  
1191 East Iron Eagle Drive  
Eagle, ID 83616  
Telephone: (208) 938-9500  
Facsimile: (208) 938-9504

Attorney for Plaintiff

DOCKETED

IDAHO COUNTY DISTRICT COURT  
AT 1:40 FILED 10 O'CLOCK P.M.

APR - 3 2013

KATHY MACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho corporation,  
Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision of  
the State of Idaho, and  
SIMMONS SANITATION SERVICE, INC., an  
Idaho corporation,  
Defendants.

Case No. CV 42360

EXHIBITS TO THE COMPLAINT

Plaintiff, by and through their attorney of record Dennis M. Charney hereby submits Exhibits to the Complaint in the above referenced matter. The exhibits were unintentionally excluded when the Complaint was originally filed.

RESPECTFULLY submitted this 1<sup>st</sup> day of April, 2013.

  
DENNIS M. CHARNEY

EXHIBITS TO THE COMPLAINT- 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following on the dates noted:

Mailed on April 1, 2013

Idaho County  
320 W. Main  
Grangeville, ID 83530

☒ ( X ) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

Served on March 28, 2013

Simmons Sanitation  
David Risley  
P.O. Box 1247  
1443 Idaho Street  
Lewiston, ID 83501

☐ ( ) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile  
☒ ( X ) Electronic Mail [David@risleylawoffice.com](mailto:David@risleylawoffice.com)

By Tri-County Process Server  
Idaho Secretary of State  
P.O. Box 83720  
700 West Jefferson  
Boise, ID 83720

☐ ( ) U.S. Mail, Postage Prepaid  
☒ ( x ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile  
☐ ( ) Electronic Mail

  
Linda Higgins

# EXHIBIT A

## SOLID WASTE MANAGEMENT SYSTEM PROPOSAL SPECIFICATIONS

Idaho County hereby requests proposals for a Solid Waste Management System of County's solid waste. This would involve the collection of solid waste in the rural southwestern part of Idaho County. Services required by the County include operating and Managing a solid waste collection system under certain Proposal Specifications. An Operations Plan to be prepared by Contractor and approved and adopted by County, and in compliance with Applicable County Ordinances.

The County will select a contractor on the basis of evaluation criteria set forth in proposal specifications. These criteria include, but are not limited to, the following:

- Prior experience, competency.
- Management capability, schedule availability, and financial resources.
- Cost of services.
- Ability to satisfy project performance requirements established by the County in the proposal specifications.
- Compatibility with existing service facilities to be operated by the County and/or other contractors to the County.
- Acceptance of performance enforcement provisions set forth in the proposal specifications.
- Contractors who have not contracted with Idaho County in the past may be required to obtain a performance bond for the first two years of the contract.
- Currently there are thirty-four (34) disposal sites involved with this contract. It will be a requirement to consolidate those sites into eight (8) to twelve (12) fenced sites located at locations approved by the County.

Idaho County is an equal opportunity employer. The County reserves the right to reject any and all Proposals

ALL PROPOSALS ARE DUE THE 18<sup>th</sup> DAY OF October, 2012. by 5:00 pm

PLEASE SUBMIT PROPOSALS TO KATHY ACKERMAN, 320 WEST MAIN STREET,  
GRANGEVILLE, ID.

A REVIEW OF THE PREVIOUS CONTRACT FOR THE PROPOSED AREA IS  
AVAILABLE AT THE IDAHO COUNTY RECORDER'S OFFICE.

PLEASE DIRECT QUESTIONS TO KATHY ACKERMAN, IDAHO COUNTY  
RECORDER, 320 WEST MAIN STREET, GRANGEVILLE, ID (208) 983-2751

EXHIBIT A-3

## EVALUATION OF PROPOSALS

- A. Evaluation Process - Proposals may be evaluated according to the process outlined in this section. COUNTY may conduct the evaluation process as follows:
1. All Proposals received by the submission date identified in the Notice of Request for Proposal will be catalogued and distributed for preliminary review by County staff and/or its advisors. Each proposal will be reviewed for responsiveness and completeness by COUNTY and/or its advisors. At COUNTY'S discretion, proposers may be notified by COUNTY of omissions or of the need to modify the proposal, and a schedule for provision of the missing information or issuing an amended proposal may be established by COUNTY.
  2. Based on the evaluation criteria set forth below, evaluation of Proposals found by COUNTY to satisfy minimum requirements will be conducted by COUNTY and/or its advisors. COUNTY may conduct interviews to discuss or clarify aspects of Proposals with some or all Proposers.
  3. The Board of Commissioners will decide which proposer(s), if any, is (are) the successful proposer(s) and COUNTY will begin contract negotiations with the successful proposer(s).

If for any reason during the course of negotiations with the successful proposer the County determines in its sole discretion that an acceptable Agreement cannot be negotiated, the County reserves the right to suspend negotiations with the successful proposer, contact the second ranked proposer, and begin negotiations with that proposer. The County reserves the right to reject any and all Proposals.

- B. **EVALUATION CRITERIA** - Evaluation of the Proposals will be based on four categories of information provided in the proposer's submittal. Principal evaluation criteria within each category are listed as follows:

1. Qualifications - Evaluation criteria for the proposer's qualifications will include the following:
  - a) Prior experience from similar projects of Proposer and individual Project team members in all aspects of the Project.
  - b) Management experience of the proposer.
  - c) Recommendations from listed references.
  - d) Past record of meeting performance standards at similar facilities.
  - e) Financial resources of the proposer, its parent, or joint-venture partner and its willingness to support all financial guarantees and to commit the necessary resources to this Project.
  - f) Letter of intent from a Surety or financial institution that expresses interest in providing the required performance guarantees for this project.

2. Satisfy Requirements -
  - a) Equipment designated for this service.
  - b) Ability and flexibility to deal with peak flow.
  - c) Ability and flexibility to deal with growth.
  - d) Ability and flexibility to respond to problems caused by weather or accidents.
3. Technical Proposal -
  - a) Apparent ability of the proposed Contractor to provide efficient communications with the County, effective control over and adherence to the Project workload, and effective cost and quality control.
  - b) Acceptance of contractual provisions.
  - c) The proposed contractor must agree to abide by all DEQ or EPA requirements.
4. Cost Proposal -
  - a) Total costs under the County's unmodified contract terms and allocation of risk.
  - b) Total costs under acceptable modifications to the County's proposed contract terms and allocation of risk.



# EXHIBIT B

**Walco, Inc.**

**Solid Waste Disposal**

1206 South Hall Street  
Grangeville, Idaho 83530  
208-983-1550  
208-983-2850 fax

Idaho County Commissioners  
320 West Main Street, Rm 5  
Grangeville, Idaho 83530  
208-983-2751

Dear Idaho County Commissioners:

Walco would like to thank the Idaho County Commissioners for the opportunity to provide a proposal for Solid Waste Services. We look forward to serving Idaho County if selected as your contractor.

Thank you!

If you have any questions or would like us to come in for a meeting, please contact us at 208-983-1550.

Sydney K. and Dorothy Walker  
Marietta and Patrick Holman  
Walco, Inc.

**Walco, Inc.**  
1206 South Hall Street  
Grangeville, Idaho 83530  
208-983-1550  
208-983-2850 fax

# **SOLID WASTE MANAGEMENT SYSTEM BID PROPOSAL FROM WALCO, INC.**

**For Idaho County, Idaho**

Submitted on October 12, 2012

EXHIBIT B-3

Walco, Inc.  
1206 South Hall Street  
Grangeville, Idaho 83530  
208-983-1550  
208-983-2850 fax

**SOLID WASTE MANAGEMENT SYSTEM PROPOSAL  
COST OF SERVICES  
For Idaho County, Idaho  
From Walco, Inc. – Grangeville, Idaho**

**Cost of Services**

**Price:** \$87,000.00 a month

Walco's bid price specifications are set forth as follows:

- Walco will continue to allow current usage of Walco's transfer station by Idaho County residents.
- Yearly cost of living increase of 5% per year. Fuel surcharge eliminated.
- Price applies to current services and routes. No adjustment after consolidation.
- County may continue with recycling program. No adjustment to monthly price if County elects to do so.
- Walco or County will develop consolidated sites. County will reimburse actual expenses if Walco is taxed to do so.
- Contract term begins January 1, 2013 and ends December 31, 2022.
- All other terms and conditions of current contract, to the extent they are not inconsistent with this proposal, shall remain the same.

Walco, Inc.  
1206 South Hall Street  
Grangeville, Idaho 83530  
208-983-1550  
208-983-2850 fax

# **SOLID WASTE MANAGEMENT SYSTEM PROPOSAL SPECIFICATION INFORMATION**

## **For Idaho County, Idaho From Walco, Inc. – Grangeville, Idaho**

### **Qualifications (Prior Experience – Competency)**

Walco, Inc. has been in operation since 1956 – (56 years).

Walco, Inc. is a three-generation family business. Walco has provided excellent and dependable service and supports their community through use of local vendors/businesses and donating to various community programs.

Over the past 56 years Walco has, and currently, provides residential and commercial services to:

Idaho County  
Lewis County  
Grangeville  
Cottonwood  
White Bird  
Craigmont  
Nezperce  
Reubens  
Winchester  
Culdesac  
Nez Perce Tribe  
Nez Perce Tribal Housing

Walco, Inc. owns and operates a working Transfer Station and Non-MSW landfill.

Walco, Inc. owns and operates the long haul trucking involved with their transfer station.

Walco, Inc. provides roll off and special event container services to two counties, eight cities and several other entities.

Walco, Inc. has owned and operated a recycling center for 18 years.

Walco, Inc. is permitted to accept asbestos and has been since 1990.

Over the last 56 years Walco has provided uninterrupted and quality services and continues to uphold that level of dependable services to all their cities and counties. If awarded the bid for Idaho County, Walco, Inc. will continue to provide Idaho County the same level of dependable services.

## REFERENCES

References can be sought from the following.

### SERVICE REFERENCES

For information regarding services, company stability, dependability, job quality, etc... can be asked of from the following Walco service provided entities:

Lewis County	208-937-2661
Grangeville	208-983-1380
Cottonwood	208-962-3231
White Bird	208-839-2294
Craigmont	208-924-5432
Nezperce	208-937-1021
Reubens	
Winchester	208-924-5358
Culdesac	208-843-5483
Nez Perce Tribe	208-843-7368
Nez Perce Tribal Housing	208-843-2229

### FINANCIAL REFERENCES

See attached letter.

Sterling Savings Bank  
147 West Main Street  
Grangeville, Idaho 83530  
(208) 983-0600  
Contact person: Beryl Grant

### BUSINESS REFERENCES

For information regarding Walco as a customer the following can be contacted:

Primeland Cooperatives  
1001 North A Street  
Grangeville, ID 83530  
(208) 983-0210

Les Schwab Tire Center  
411 East Main Street  
Grangeville, ID 83530  
(208) 983-1650

Bell Equipment, Inc.  
118 West South Street  
Grangeville, ID 83530  
(208) 983-1730

Prairie Fab & Repair  
720 Denver Cemetery Road  
Grangeville, ID 83530  
(208) 983-9166

*More references can be provided if needed.*

## **Management Capability – Schedule Availability – Financial Resources**

### **Management Capability**

Since Walco started in 1956 (formerly Walker Sanitation) Walco has kept up with the advancements of solid waste pertaining to our geographical area. Idaho County, being a large county, made for some difficult solid waste challenges over the years.

Below are some of the various efforts Walco has made for Idaho County and other Walco serviced entities:

- Opening and closing of several Walco owned MSW landfills. Because of DEQ regulations all small MSW landfills were forced to close in 1994.
- Opening/permitting a Non-MSW landfill. By permitting a Non-MSW Walco alleviated a huge cost to Walco serviced residents. This was not a requirement made by any county or city serviced by Walco.
- Permitting their Non-MSW landfill for asbestos. One of the first Idaho approved landfills by DEQ in 1990 and continues to be a highly recommended landfill by DEQ and the Idaho Health Department for asbestos disposal.
- Researching and testing areas for the possibility of a 5 regional MSW landfill in 1989-91
- Attempting to coordinate a 5 regional barging system out of Lewiston in 1989-91
- Attempted the building of an incinerator in 1990-01.
- In 1993-94 started offering roll off service to Walco customers.
- Finally Walco opened a Transfer Station in 1994.
- Walco built a Z-wall system for non-MSW separation at their Walco Transfer Station.
- In 2006 Walco took over the hauling of solid waste from their transfer station.

All of the above demonstrate Walco's determination to consistently provide the best solid waste option for their service area.

Other service advancements but are city based include:

- Walco was one of the first companies in Idaho to start automated cart service later to advance to compulsory automated cart service in all towns contracted with Walco. This drastically helped with employee stability.
- Walco has provided city wide clean ups for well over 40+ years.
- For over 12 years Walco has been providing a yard waste program to the City of Grangeville.
- Walco for over 15 years provided covered recycling roll off boxes to various towns until volunteer efforts diminished and the market for recycled material dropped, making the program a costly service.
- Walco led the efforts to clean up Lapwai through carts, city wide clean ups, transfer site, and yard waste separation.

### **Schedule Availability**

Walco is available now to begin the new contract. The transition from the old contract to the new will be seamless.

Walco has a large fleet of garbage trucks, readily available containers, competent employees and prior knowledge of Idaho County's system.

Walco is centrally located in Idaho County, for the service area this bid is being sought after, and has the ability to provide all levels of service.

### **Financial Resources**

Walco is a sound, strong business and has been around for 56 years. Walco owns their trucks, trailers, transfer station, landfill, land associated with the business, etc...

A statement from Sterling Savings Bank is included with this proposal demonstrating Walco's financial strength.

**Costs of Service:**  
SEE ATTACHMENT

**Ability to satisfy project performance requirements established by the County in the proposal specifications.**

Walco currently provides the solid waste services to Idaho County. If Idaho County approves this proposal Walco has the ability to satisfy the project performance requirements chosen by the County.

**Equipment designated for service**

Walco owns a large fleet of working and back-up trucks to provide the requested services. Walco's Transfer station is equipped to take on any and all waste associated with Idaho County.

**Ability and flexibility to deal with peak flow**

Walco owns the equipment (trucks, containers, roll offs, carts, etc...) and employees to deal with peak flows. Walco has in the past added/modified routes to accommodate excessive waste whether its cause be population, community functions, resident mis-use, etc...

**Ability and flexibility to deal with growth**

Walco has the equipment (trucks, containers, roll offs, carts, etc...) and employees to deal with growth. Walco can, at anytime, add, subtract, and modify routes to cover growth within the guidelines and budget set forth in the contract.

Walco has grown as a company over the years and one key advancement Walco made 6 years ago was purchasing the hauling business associated with their transfer station. We have a fleet of trailers to accommodate the waste currently received and have the ability to adjust to any growth Idaho County may see in the next 10 years.

**Ability and flexibility to respond to problems caused by weather or accidents**

Over the years only a few weather incidents have caused Walco to postpone regularly scheduled pick ups. Drifting snow, negative temperatures (where hydraulic lines freeze) and the occasional snow storm have sometimes caused delays. Walco has a large fleet of trucks to provide the much needed service and backups to aid if there was ever a delay in regularly scheduled pick ups. Usually, if Walco can't get to the containers, neither can the residents so as soon as roads open up we will be there to pick up the containers.

Walco also owns and operates their transfer station and non-MSW landfill. With that comes a large amount of storage capabilities in the forms of roll off boxes and transfer trailers. This allows Walco large flexibility to divert or store waste until normal operations can commence.

**Compatibility with existing service facilities to be operated by the County and/or other contractors to the County.**

Walco is willing to consider compatibility with existing service facilities operated by the County and/or other contractors to the County, within reason, and as long as the scope of the original RFP is not altered to cause financial upset to the original requirements set out by Idaho County.

**Contractors who have not contracted with Idaho County in the past may be required to obtain a performance bond for the first two years of the contract.**

Attached is a copy of Walco's insurance coverage.



Currently there are thirty-four (34) disposal sites involved with this contract. It will be a requirement to consolidate those sites into eight (8) to twelve (12) fenced sites located at locations approved by the County.

Walco is prepared to work with the County to consolidate the sites. Because Walco has been the service provider for many years, Walco's input with respect to this project will be invaluable and make consolidation efficient, inexpensive and effective.

# SOLID WASTE AGREEMENT BETWEEN IDAHO COUNTY, IDAHO, AND WALCO, INC.

THIS SOLID WASTE MANAGEMENT CONTRACT (the "Contract") is entered into this 1<sup>st</sup> day of January, 2013, by and between the County of Idaho, a political subdivision of the State of Idaho, herein referred to as "County", and WALCO, Inc., an Idaho corporation, herein referred to as "Contractor." The effective date of this Contract shall be January 1<sup>st</sup>, 2013.

## RECITALS:

WHEREAS, pursuant to Idaho Code § 31-4404, the County is charged with the responsibility of maintaining and operating solid waste disposal systems and authorizes for the related services thereof to be provided by means of an exclusive franchise with private persons or entities;

WHEREAS, the County and Contractor have a long history of working toward the common goal of providing the highest quality and most cost effective waste management services for the people of Idaho County. In furtherance of that common goal, the County and Contractor have negotiated, in good faith, this ongoing agreement for the collection, handling, processing, transporting, and disposal of the County's solid waste;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Contractor and the County hereby agree as follows:

## I. DEFINITIONS

The definitions of terms used in this agreement are as follows:

1.1 "Solid Waste" shall mean all garbage, rubbish resulting from community activities, excluding hazardous waste, infectious waste, or any other waste the acceptance of which would violate local, state, or federal laws.

1.2 "Inert Waste" shall mean noncombustible, nonhazardous, and non-putrescible solid waste that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal.

1.3 "Garbage" shall mean all putrescible waste, except sewage and body waste (animal and human), including waste that attends the preparation, use, cooking, dealing in or storing meat, fish, fowl, fruit and vegetables, and shall include all of such wastes or accumulation of vegetable matter of residences, restaurants, hotels, and places where food is prepared for human consumption. It shall also include small animals. The term "garbage" shall not include recognized industrial by-products or hazardous and infectious wastes as defined by the Idaho State Department of Health and United States Environmental Protection Agency.

1.4 "Hazardous Waste" shall mean any chemical, compound, mixture, substance, or article which is designated by the United States Environmental Protection Agency, other appropriate agency of the Federal Government, or the State of Idaho to be "hazardous" as that term is commonly defined or defined in pursuant to law to include petroleum products.

1.5 "Infectious Waste" shall mean any material, chemical, compound, mixture, substance, or article known to be infectious by the producer or which is designed by the United States Environment Protection Agency, other appropriate agency of the Federal Government, or the State of Idaho to be "infectious" as that term is commonly defined or defined pursuant to law.

1.6 "Rubbish" shall mean refuse produced in the normal course of everyday living, including items such as tin cans, bottles, ashes, paper, pasteboard, cardboard, wooden boxes and all other non-putrescible discarded material or debris. Rubbish shall also include yard debris, including brush, leaves, weeds, and cuttings from trees, lawns, shrubs, and gardens but shall not include Garbage, Construction Waste, Hazardous Waste, or Infectious Waste.

1.7 "Transfer Station" shall mean a facility or portion thereof where solid wastes are transferred from a vehicle or container and subsequently transported off-site to another facility. A transfer station does not include an authorized rural drop-box or other facilities where persons are authorized to store individual waste for ultimate collection and disposal, or any other facility that stores solid waste generated at the facility for collection and disposal off-site.

1.8 "White Goods" shall mean household appliances including, but not limited to, refrigerators, ranges, washers, dryers, etc.

1.9 "Construction Waste" means the waste building materials, packaging and rubble resulting from the construction, remodeling, repair and demolition operations on pavements, concrete structures, houses, commercial buildings and other structures. Non-inert wastes and asbestos wastes are not considered to be demolition waste.

## II. DURATION

2.0 The term of this contract shall be from January 1, 2013, the remaining time of the existing prior contract and shall terminate on December 31, 2022.

## III. DUTIES

### 3.0 Collection of Solid Waste:

3.1 General Duty. The Contractor shall collect household and commercial types of solid waste from within those areas identified in Exhibit A and the Elk City area which shall consist of three separate parcels (collectively referred to as "Service Area") which are deposited by users in a lawful manner.

3.2 Container Service. The Contractor is permitted to set up containers at various sites within the Service Area to which the User will be required to transport and deposit his or her

SOLID WASTE COLLECTION AGREEMENT  
WALCO 2013

2

EXHIBIT B-11

solid waste in a lawful manner for central pick up by the Contractor. Users are limited to depositing no more than one cubic yard of solid waste per week. The containers shall be kept clean and in good working condition by Contractor.

3.3 Additional Service. In addition to the above-described collection services, the Contractor shall provide collection services to everyone in the Service Area who voluntarily contracts with the Contractor for collection services by way of individual pickup, container service, or roll-off boxes for special jobs. The rates of such service shall be subject to negotiations between the User and Contractor subject to the User's right to appeal to the Board of County Commissioners regarding said rate.

3.4 Records. The Contractor shall provide to the County on at least a quarterly basis records of the tonnage of waste collected by Contractor from rural Idaho County as well as the total tonnage of waste collected by Contractor from Idaho County.

#### IV. CONTAINERS

4.1 General Service. The Contractor shall place containers in locations such that the entire service area will be generally served at all times during the year and in a manner such that no significant grouping of residents shall be overly burdened by the distance needed to travel to dispose of their solid waste. It is understood, however, that the geography of Idaho County and the population density of its residents will ultimately require some county residents to have to travel farther than other residents to dispose of their solid waste.

4.2 Location of Containers. The parties acknowledge and agree that as of the effective date of this contract, the list of container locations attached hereto as Exhibit "B", which shall include the number, size, and frequency of service at each location, meets the requirements of generally serving the service area.

#### 4.3 Change in Container Sites

4.3.1 The Contractor may make a written request to the County to remove and or change any container sites identified in Exhibit "B" should circumstances change (e.g. shifts in population or population growth) such that the locations identified in Exhibit "B" become obsolete or impractical. Permission to remove and or change such sites shall not be unreasonably withheld by County. The County shall notify Contractor, in writing, within 14 days of the written request as to its decision to grant or deny the request. Should the County fail to issue a timely decision, then the request shall be deemed denied.

4.3.2 Should there be an increase or reduction of container sites identified in Exhibit "B" for which either party deems a price adjustment should result, then the requesting party shall submit a written request for a meeting with the other party to discuss the issue. The parties shall meet within 60 days of the meeting request. Should the parties not reach an agreement with regard to the issue, then either party may request arbitration on that issue.

4.3.3 The County may request the Contractor, in writing, to add additional container location(s) which said request shall not be unreasonably denied by Contractor. The Contractor shall notify the County, in writing, within 20 days of the written request as to its decision. Should the Contractor fail to issue a timely decision, then the request shall be deemed denied.

4.4 Securing Container Sites. The current sites identified in Exhibit "B" shall be maintained; however, if a site within Exhibit "B" can no longer be used through no fault of the Contractor then the Contractor cannot be held in default or breach of contract for failing to provide adequate coverage of the service area. The County shall assist the Contractor in finding an alternate site that is mutually agreeable to both parties in that general area.

4.5 Container Site Maintenance. The Contractor will keep container sites clean of debris and other wastes to the best of their ability. If there is an excessive amount of waste on the ground (such as large piles of garbage, construction/demolition waste, appliances, yard waste, or other waste deliberately disposed of on the ground by User), then Contractor may seek compensation for the extra time and labor for clean-up costs. No compensation shall be allowed when the reason for the abuse is the result of lack of service. In submitting requests for costs, the Contractor shall provide substantial photographic or other evidence of the area depicting the abuse and shall provide the County with notice of the amount of time required to clean the site. The County shall be responsible for snow removal, weed removal, grading and gravel.

4.6 Prior to the removal of any dumpsters from a particular location, the Contractor shall provide reasonable advance notice to the public and to the Idaho County Commission of its intent to remove dumpsters from a particular location.

## V. TRANSFER STATION AND LANDFILL

5.0 Operation of a Transfer Station and Landfill. The Contractor shall operate a transfer station within Idaho County. Contractor shall transfer solid waste from collection, compact it into transfer trailers, and transport it to an approved landfill. The Contractor may also operate a benign landfill for disposal of any materials allowed by the Contractor's permit for landfill operations with the North Idaho Central Health District. Contractor has the right to haul materials to any other permitted benign landfill. The Contractor shall have the right to close or cease operating its benign landfill should it become economically unfeasible to continue its operation, a change in laws or regulations cause the closure of the landfill, or the Contractor sells the landfill or contracts with another entity to operate said landfill. Should the Contractor cease operation of the landfill, then it shall notify the County as soon as possible of the closure. Such closure shall not, however, constitute a default of breach of this contract by Contractor.

5.0.1 The Contractor shall have the ability in its collection efforts to direct contributors to the system to segregate and divide benign materials from those that are required to be hauled to a separate approved landfill.

5.1 Transfer Station Facilities. The contractor shall provide a covered building with two (2) bays and a drop box. The facility shall be capable of handling forty (40) tons of solid waste each day. The building must include push walls and a concrete tipping floor. Scales must be

included to weigh the waste stream. Adequate facilities will be provided for employees, including a restroom, phone, and an operator station. The facility must be certified by the North Central Idaho Health District and will operate according to Health District guidelines as well as any other applicable federal or state laws, rules, or regulations. The Contractor shall also provide for the disposal and handling of white goods.

5.2 Operating Hours. The transfer station will be open a minimum of four (4) days a week, including a weekend day in the summer time (April to October) and three (3) days, including a weekend day the remainder of the year to receive waste from the public. A day shall be defined as eight (8) hours of operation open to the public. Provisions will be made to weigh incoming wastes from the compactor trucks as well as from the public. Sufficient equipment and personnel will be available to insure that there is no stockpiling of waste material. Operations of the transfer station will be in compliance with all state and federal regulations. The Contractor shall ensure that the transfer station is kept clean and in good operating condition.

5.3 Transferring Solid Waste to Designated Landfill. The Contractor will be responsible for making arrangements for hauling all solid waste, including white goods and incidental tires, deposited and processed through the transfer station to an approved disposal site which shall be selected by the County. The Contractor shall pay for the tipping fee at the disposal site. The parties acknowledge that the County has selected a site at Clay Peak Landfill, located at Payette, Idaho, as the designated disposal site.

## VI. COMPENSATION

6.0 Base Rate. The County shall pay Contractor a base rate of \$87,000 per month commencing January 1, 2013.

### 6.1 Commercial Collections.

6.1.1 With regard to commercial collections, Contractor shall establish its rates for collection services with the Commercial Users. Said rates shall depend upon the type, quantity, volume, and weight of the material disposed of as well as the topography, distance, and other factors that are peculiar to the area being serviced. Contractor is entitled to all funds collected from Commercial Users which said funds shall be in addition to the Base Rate identified.

6.1.2 Disputes. In the event of a dispute between the Contractor and any Commercial User, the matter shall be submitted to the County Commission who shall have the right to arbitrate the dispute and render a decision which shall be binding upon the parties and nonappealable.

6.2 Special Users. In addition to the Base Rate, the Contractor shall be entitled to all funds received from users who have contracted with Contractor for services including individual pick up, container service, and roll-off boxes for special jobs. Rates for such services shall be set by the Contractor and shall be similar to those offered in adjacent counties and by similar operators. Topography, distance, and other factors that are peculiar to the service area will be

taken into consideration in setting said fees. Contractor shall provide a fee schedule to the County identifying the costs associated with the different types and sizes of containers for the different areas of the service area. Special Users shall have the right to appeal to the Board of County Commissioners in same manner as set forth in 6.1.2.

6.3 Special Prices. In addition to the Base Rate, the County shall pay to Contractor the following:

6.3.1 Tires. The County Commissioners will discourage the disposal of tires in the waste stream. Incidental tires will be removed and disposed of at an additional fee to the County of Eighty-Five and No/100 Dollars (\$85.00) per ton.

6.3.2 White Goods. White goods will be disposed of at an additional fee to the County of Ten and No/100 Dollars (\$10.00) an item. In the event the Contractor charges a user for a white good item, the Contractor shall not also charge the County for the same item.

6.3.3 Incidental Hazardous Wastes. The County must pay for the disposal of incidental hazardous waste. If the generator of the hazardous waste can be determined, then the generator shall be responsible for reimbursing the County for said costs. The County shall discourage any use of the County waste stream from hazardous waste.

6.4 County Designated Users. The County may enter into agreements with various entities, including governmental agencies or other counties for the collection of solid waste within the Service Area (hereinafter referred to as "Designated User"). If this contract calls for collection of solid waste at a particular site described in Exhibit B, but the general public has the use of that site the Contractor's compensation for servicing that site shall be included in the base rate hereunder. However, if a specific special site is requested by a governmental entity and that entity controls the use of that site, the Contractor may treat that request as a separate commercial account.

## VII. ANNUAL COMPENSATION ADJUSTMENTS

7.0 Annual Compensation Adjustments. The rate of compensation to Contractor shall increase each year as follows:

7.1 Increase of Base Rate. Contractor shall be entitled to a cost of living adjustment to the Base Rate. On the first day of January of each year, the Base Rate, described above, shall increase by five (5%) percent.

7.2 Tipping Fees. Any increase in tipping fees shall be passed on to the County and shall be added to the monthly Base Rate paid to Contractor. It is incumbent upon the Contractor to provide the County with sufficient records to demonstrate the increase in tipping fees.

7.3 Extraordinary Changes. Once a year, the Contractor may seek an additional increase in the Base Rate based upon an increase in total tonnage of garbage collected or an increase in locations that were added to the Service Area; an increase in permit fees and/or taxes; and for

any increase in costs of operation resulting from the enactment, adoption, promulgation, modification, repeal or change in interpretation of any federal, state, county, or other local law, ordinance, rule, code, regulation or similar legislation which directly impacts the solid waste industry, including, but not limited to, the handling, processing, transportation, and disposal of waste. At the time of the request, the Contractor shall provide to the County the increase requested and provide the County with sufficient documentation to demonstrate the need for the increase in price which said documentation shall include, at a minimum, monthly tonnage records of all solid waste attributable to Idaho County, records of all tonnage shipped to designated landfill, and tonnages for each individual city within Idaho County which is serviced by the Contractor, labor costs, and changes in mileage. The increase shall be limited to the actual increased costs to Contractor resulting from an increase in garbage collection. The County shall have sixty (60) days to respond to the request. New rates would be effective within sixty (60) days after the approval of the request.

7.4 If the parties are unable to reach an agreement as to a requested price adjustment, then either party may request for the matter to be arbitrated in a manner set forth below.

#### VIII. CONTRACTOR'S CONTROL OF CONTRACT SERVICES

8.0 Except as specifically required in this Contract, the Contractor shall have exclusive right to control the services and work performed under this agreement. The Contractor is an independent contractor in all respects and as such shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and sub-contractors. Nothing in this agreement shall be construed as creating a partnership or joint venture between the County and Contractor or giving the County a duty to supervise or control the acts or omissions of the Contractor and/or its agents or employees.

8.1 Existing Landfill. Contractor will not seek reimbursement for any costs associated with the closure of Contractor's existing landfill should closure be necessary pursuant to the change in state and/or federal regulations. However, should such closure occur, then the Contractor shall have the right to seek additional compensation resulting from an increase in costs associated with the transporting and disposal of additional waste. If the parties cannot agree to a change in compensation, then either party may request for the matter to be arbitrated in a manner set forth below.

#### IX. INSURANCE PROVISION

9.0 The Contractor shall procure and maintain, at its own expense, liability and workers' compensation insurance. A certificate of insurance shall be filed with the County at all times during the term of this Contract. The certificate of insurance shall contain a provision that coverage afforded under the policies will not be canceled until at least 30 days prior written notice shall have been given to the County prior to the commencement of the contract. General liability and comprehensive insurance shall be maintained with a policy limit of not less than One Million and No/100 Dollars (\$1,000,000.00) for all damages arising out of bodily injury, including dental, at any time resulting therefrom, sustained by any one person in any one accident, and a limit of liability of not less than Two Million and No/100 Dollars



(\$2,000,000.00) aggregate for any such damages sustained by two or more persons in any one accident. The Contractor shall also carry excess liability or umbrella coverage with at least One Million and No/100 Dollar (\$1,000,000.00) policy limits. The County shall be named as an additional insured on any policy of liability insurance.

The Contractor shall procure and maintain at his own expense, in accordance with the provisions of the laws of the State of Idaho Workers' compensation insurance including occupational disease provisions for all of the Contractor's employees engaged in work under this contract. Proof of continuous workers' compensation insurance shall be likewise posted with the County at all times. In case any work is sublet by the Contractor, the Contractor shall require such subcontractor to provide workers' compensation insurance. In case any class of employees engaged in hazardous work under this contract is not protected under the worker's compensation statutes, the Contractor shall provide for adequate and suitable insurance for the protection of such employees.

9.1 The County may choose to purchase additional liability insurance to cover risks of solid waste spillage in the County's sole discretion.

#### X. INDEMNIFICATION

10.0 The Contractor shall indemnify and hold the County harmless from any and all losses from all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought for recovery against the County by reason of negligence or any act of omission of the Contractor's agents or employees in the performance of this Contract.

#### XI. CONTROL OF WASTE STREAM

11.1 The Contractor shall have the exclusive right of collection, salvage, and/or recycling with respect to the solid waste and rubbish collected by the Contractor. Pursuant to this agreement, the County retains ownership of all non-sorted refuse placed in the transfer trailer for delivery to the disposal site. Scavenging will not be permitted. Notwithstanding the above, the County has the right to operate a recycling program at no cost to the contractor.

#### XII. BREACH OF CONTRACT

12.0 The contract may be terminated by the County if, after two (2) written notices of the same violation, not less than thirty (30) days apart, the Contractor fails to correct major violations of federal or state standards, or should the Contractor fail to perform any duties imposed upon it hereby, except by acts of God or when the failure to perform said duty is the result of a change in law for which the Contractor has no control over.

#### XIII. JURISDICTION

13.0 The terms of this Contract apply only to the Service Area described in Exhibit A and the Elk City area. The Contractor is responsible and is free to contract with incorporated cities within Idaho County.

SOLID WASTE COLLECTION AGREEMENT  
WALCO 2013

#### XIV. COMPLIANCE AND REGULATIONS

14.0 Contractor will be responsible for complying with all federal and state regulations concerning disposal of solid waste.

#### XV. FUTURE FRANCHISE

15.0 Once this Contract is completed, the Contractor shall have the right to renegotiate with the County in good faith regarding the renewal of the Contract for an additional 10 years.

#### XVI. ENTIRE CONTRACT

16.0 This agreement constitutes the entire understanding between the County and Contractor and cancels and supersedes all prior negotiations, representations, understandings, and agreements, written or oral, with respect to the subject matter hereof.

#### XVII. TERMINATION OF CONTRACT

17.0 This Contract shall terminate in case of bankruptcy or insolvency of the Contractor. The contract may also be terminated by the County if, after two (2) written notices of the same violation, not less than thirty (30) days apart, the Contractor fails to correct any material and/or substantial violations of federal or state laws. In case of termination of this contract, should the County desire to continued use of the transfer station and benign landfill, then the Contractor shall operate the transfer station and benign landfill for the County for a period of six (6) months from the termination date with the County paying Contractor a reasonable fee for the use of the benign landfill and/or transfer station. If the parties fail to agree upon a reasonable price, then the County may submit the matter for arbitration at its own expense in the manner provided below.

#### XVIII. ASSIGNMENT

18.0 No part of this contract shall be assigned or sublet by the Contractor without the express written consent of the County, with such consent shall not be unreasonably withheld.

#### XIX. DISPUTE RESOLUTION

19.0 Arbitration. Any dispute arising under the terms of this Contract shall be settled by binding arbitration in compliance with the laws of the State of Idaho. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association subject to the exception that the parties are not required to engage the services of the American Arbitration Association. Unless otherwise agreed upon by both parties, all arbitrated disputes shall be heard and decided by one arbitrator. Should the parties not agree on the selection of the arbitrator then the arbitrator shall be chosen by the Administrative District Judge for the Second Judicial District of the State of Idaho. The decision of the arbitrator shall be binding upon the parties, and nonappealable.

19.1 Arbitrator's Fees Costs. Arbitration costs shall usually be split unless the arbitrator finds that a position has been urged frivolously or without foundation at which time attorney fees may be awarded against the non-prevailing party.

## XX. AMENDMENTS

20.0 This agreement shall not be amended or modified except by written instrument authorized and executed by the parties hereto.

## XXI. SEVERABILITY

21.0 If any term or provision of the Contract is held invalid, the remainder of such terms or provision of this contract shall not be affected, if such remainder would then continue to conform to the terms and requirements of applicable law.

## XXII. NO WAIVER

22.0 Failure by either party to enforce any condition, requirement, responsibility, or provision of the contract shall not be construed as a waiver of the party's right to subsequently enforce that condition, requirement, responsibility, or provision of this Contract or to fully enforce any other condition, requirement, responsibility, or provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

COUNTY: IDAHO COUNTY, IDAHO  
BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Commissioner

By: \_\_\_\_\_  
Commissioner

Attest:

\_\_\_\_\_  
SOLID WASTE COLLECTION AGREEMENT  
WALCO 2013

Clerk

CONTRACTOR: WALCO, INC.

By: \_\_\_\_\_  
Sydney K. Walker, President

By: \_\_\_\_\_  
Dorothy R. Walker, Secretary

STATE OF IDAHO    )  
                              ) ss.  
County of Ada        )

On this \_\_\_\_\_ day of February, 2012, before me, the undersigned, a Notary Public in and for said state, personally appeared Sydney K. Walker and Dorothy R. Walker, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for:  
Residing at:  
My Commission Expires:

SOLID WASTE COLLECTION AGREEMENT  
WALCO 2013

11

EXHIBIT B-20

SOLID WASTE MANAGEMENT  
SYSTEM PROPOSAL SPECIFICATIONS

THIS SOLID WASTE MANAGEMENT SYSTEM CONTRACT (the "Contract") is entered into this 1<sup>st</sup> day of January, 2013, by and between the County of Idaho, a political subdivision of the State of Idaho, herein referred to as "County", and \_\_\_\_\_, herein referred to as "Contractor." The effective date of this Contract shall be 1<sup>st</sup> day of January, 2013.

RECITALS:

WHEREAS, pursuant to Idaho Code § 31-4404, the County is charged with the responsibility of maintaining and operating solid waste disposal systems and authorizes for the related services thereof to be provided by means of an exclusive franchise with private persons or entities;

WHEREAS, the County and Contractor have a common goal of providing the highest quality and most cost effective waste management services for the people of Idaho County. In furtherance of that common goal, the County and Contractor have negotiated, in good faith, this ongoing agreement for the collection, handling, processing, transporting, and disposal of the waste from the designated areas of rural and non-incorporated areas in Idaho County's solid waste;

WHEREAS, the County finds that it is necessary for the protection of public health, welfare and safety to enter into this Contract and that the Contractor shall have an exclusive franchise to collect, haul, and dispose all solid waste, from the designated areas of rural and non-incorporated areas in Idaho County as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Contractor and the County hereby agree as follows:

I. DEFINITIONS

The definitions of terms used in this Agreement are as follows:

1.1 Definition of Terms. For the purpose of this Contract, the following terms, phrases and words shall have the following meaning:

1.1.1 "Construction and Demolition Waste" means waste building materials resulting from construction remodeling, repair or demolition operations.

1.1.2 "Green Waste" means, grass clippings, garden waste or other vegetable matter capable of being reprocessed or reused.

1.1.3 "Hazardous Materials" means any compound, mixture, substance or article which is designated by the United States Environmental Protection Agency as a "hazardous substance" under 42 USC § 9601 and implementing federal rules or designated as a "hazardous waste" by the Idaho Department of Environmental Quality (IDEQ) pursuant to the Idaho Hazardous Waste Management Act (HWMA) at Title 39, Chapter 44 and implementing rules.

1.1.4 "Household Waste" means any solid waste including garbage or trash and sanitary waste in septic tanks derived from households, hotels, motels, campgrounds and day use recreation areas.

1.1.5 "Infectious Waste" shall mean any material, chemical, compound, mixture, substance, or article known to be infectious by the producer or which is designed by the United States Environment Protection Agency, other appropriate agency of the Federal Government, or the State of Idaho to be "infectious" as that term is commonly defined or defined pursuant to law.

1.1.6 "Municipal Solid Waste" means household waste and other waste as defined by IDEQ Rules.

1.1.7 "Non-Municipal Solid Waste" means construction and demolition waste, wood debris and other inert wastes as defined by IDEQ rules.

1.1.8 "Recyclable Materials" means products or substances including, but not limited to, paper, cardboard, metal, aerosol cans, and plastics or other substances capable of being re-processed or re-used. For purposes of this Contract, Green Waste is not to be considered as Recyclable Materials.

1.1.9 "Solid Waste" means garbage and trash or other matter, sludge and other discarded solid materials, including materials which are recyclable, or compostable. Solid waste includes waste from residential, industrial, business, institutional and agricultural operations. In addition, solid waste may include de minimus quantities of hazardous materials produced by households.

1.1.10 "Transfer Station" shall mean a facility or portion thereof where solid wastes are transferred from a vehicle or container and subsequently transported off-site to another facility. A transfer station does not include an authorized rural drop-box or other facilities where persons are authorized to store individual waste for ultimate collection and disposal, or any other facility that stores solid waste generated at the facility for collection and disposal off-site.

1.1.11 "White Goods" shall mean household and commercial appliances including, but not limited to, refrigerators, ranges, washers, dryers, etc.

## II. DURATION

2.0 The term of this Contract shall be from January 1, 2013, and shall terminate ten years from that date.

## III. DUTIES

### 3.0 Collection of Solid Waste.

3.1 General Duty. The Contractor shall collect household and commercial types of solid waste from those areas identified in Exhibit A, the "Service Area") which are deposited by users in a lawful manner.

3.2 Container Service. The Contractor is permitted to set up containers at various sites within the service area to which the user will be required to transport and deposit his or her solid waste in a lawful manner for central pick up by the Contractor. Users are limited to depositing no more than one cubic yard of solid waste per week. The containers shall be kept clean and in good working condition by Contractor.

3.3 Additional Service. In addition to the above-described collection services, the Contractor shall provide collection services to everyone in the Service Area who voluntarily contracts with the Contractor for collection services by way of individual pickup, container service, or roll-off boxes for special jobs. The rates of such service shall be subject to negotiations between the User and Contractor subject to the User's right to appeal to the Board of County Commissioners regarding said rate.

3.4 Records. The Contractor shall provide to the County on at least a monthly basis records of the tonnage of waste collected by Contractor from the designated areas of rural and non-incorporated areas in Idaho County.

## IV. CONTAINERS

### 4.1 Change in Container Sites.

4.1.1 The Contractor may make a written request to the County to remove and or change any container sites identified in Exhibit "B" should circumstances change (e.g. shifts in population or population growth) such that the locations identified in Exhibit "B" become obsolete or impractical. Permission to remove and or change such sites shall not be unreasonably withheld by County. The County shall notify Contractor, in writing,

within 20 days of the written request as to its decision to grant or deny the request. Should the County fail to issue a timely decision, then the request shall be deemed denied.

4.1.2, Should there be an increase or reduction of container sites identified in Exhibit "B" for which either party deems a price adjustment should result, then the requesting party shall submit a written request for a meeting with the other party to discuss the issue. The parties shall meet within 60 days of the meeting request. Should the parties not reach an agreement with regard to the issue, then the dispute is subject to binding arbitration pursuant to Section XIX hereof and either party may request arbitration on that issue.

4.1.3 The County may request the Contractor, in writing, to add additional container location(s) which said request shall not be unreasonably denied by Contractor. The Contractor shall notify the County, in writing, within 20 days of the written request as to its decision. Should the Contractor fail to issue a timely decision, then the request shall be deemed denied.

4.2 Securing Container Sites. The current sites identified in Exhibit "B" shall be maintained; however, if a site within Exhibit "B" can no longer be used through no fault of the Contractor then the Contractor cannot be held in default or breach of contract for failing to provide adequate coverage of the service area. The County shall assist the Contractor in finding an alternate site that is mutually agreeable to both parties in that general area.

#### 4.3 Container Site Maintenance.

4.3.1 The Contractor will keep container sites clean of debris and other wastes to the best of their ability. If there is an excessive amount of waste on the ground (such as large piles of garbage, construction/demolition waste, appliances, yard waste, or other waste deliberately disposed of on the ground by User), then Contractor may seek compensation for the extra time and labor for clean-up costs. No compensation shall be allowed when the reason for the abuse is the result of lack of service. In submitting requests for costs, the Contractor shall provide substantial photographic or other evidence of the area depicting the abuse and shall provide the County with notice of the amount of time required to clean the site. The County shall be responsible for snow removal, weed removal, grading and gravel in the approaches and parking area container sites. Contractor shall be responsible for snow removal, weed removal, grading and gravel inside the enclosure at each container site.

4.3.2 Contractor owns and will repair or replace as necessary all dumpsters. County will repair or replace the fencing enclosing each site provided, however, that contractor will perform routine and minor maintenance on the fencing.



4.4 Prior to the removal of any dumpsters from a particular location, the Contractor shall provide reasonable advance notice to the public and to the Idaho County Commission of its intent to remove dumpsters from a particular location.

## V. TRANSFER STATION AND LANDFILL

5.1 Operation of a Transfer Station and Landfill. The Contractor shall operate or lease a transfer station within Idaho County. Contractor shall transfer solid waste from collection, compact it into transfer trailers, and transport it to an approved landfill. The Contractor may also operate a non-MSW landfill for disposal of any materials allowed by the Contractor's permit for landfill operations with the North Idaho Central Health District. Contractor has the right to haul materials to any other permitted non-MSW landfill. The Contractor shall have the right to close or cease operating its non-MSW landfill should Contractor haul to another disposal site, or if it becomes economically unfeasible to continue its operation, a change in laws or regulations cause the closure of the landfill, or the Contractor sells the landfill or contracts with another entity to operate said landfill. Should the Contractor cease operation of the landfill, then it shall notify the County as soon as possible of the closure. Such closure shall not, however, constitute a default of breach of this Contract by Contractor.

5.1.1 The Contractor shall have the ability in its collection efforts to direct contributors to the system to segregate and divide non-MSW materials from those that are required to be hauled to a separate approved landfill.

5.2 Transfer Station Facilities. The contractor shall provide or lease a Transfer Station facility. The facility shall be capable of handling forty (40) tons of solid waste each day. The building must include push walls and a concrete tipping floor. Scales must be included to weigh the waste stream. Adequate facilities will be provided for employees, including a restroom, phone, and an operator station. The facility must be certified by the North Central Idaho Health District and will operate according to Health District guidelines as well as any other applicable federal or state laws, rules, or regulations. The Contractor shall also provide for the disposal and handling of white goods.

5.3 Operating Hours. The transfer station will be open a minimum of seven (7) days a week, from 9:00 a.m. to 5:00 p.m. and closed during major holidays to receive waste from the public. Provisions will be made to weigh incoming wastes from the compactor trucks as well as from the public. Sufficient equipment and personnel will be available to insure that there is no stockpiling of waste material. Operations of the transfer station will be in compliance with all state and federal regulations. The Contractor shall ensure that the transfer station is kept clean and in good operating condition.

5.4 Transferring Solid Waste to Designated Landfill. The Contractor will be responsible for making arrangements for hauling all solid waste, including white goods and incidental tires, deposited and processed through the transfer station to an approved disposal site or sites which shall be selected as agreed to by Contractor and the County. The Contractor shall pay for the tipping fee at the disposal site or sites. The parties acknowledge that the County has selected a site at Clay Peak Landfill at Payette, Idaho as the designated disposal site.

5.5 Change in Designated Landfill. The County has a right to alter the designated disposal site or sites. Should it choose to alter the designated disposal site or sites then County shall be responsible for the increase in tipping and transportation costs to Contractor as a result of the change. The base price shall be increased by the increased costs. Should the tipping and transportation costs decrease the County shall be entitled to reduce the base price to reflect the amount of the decreased costs.

## VI. COMPENSATION

6.1 Base Rate. The County shall pay Contractor a base rate of \$60,823.35 per month commencing January 1, 2013.

### 6.2 Commercial Collections.

6.2.1 With regard to commercial collections, Contractor shall establish its rates for collection services with the Commercial Users. Said rates shall depend upon the type, quantity, volume, and weight of the material disposed of as well as the topography, distance, and other factors that are peculiar to the area being serviced. Contractor is entitled to all funds collected from Commercial Users which said funds shall be in addition to the Base Rate identified.

6.2.2 Disputes. In the event of a dispute between the Contractor and any Commercial User, the matter shall be submitted to the County Commission who shall have the right to arbitrate the dispute and render a decision which shall be binding upon the parties and nonappealable.

6.3 Special Users. In addition to the Base Rate, the Contractor shall be entitled to all funds received from users who have contracted with Contractor for services including individual pick up, container service, and roll-off boxes for special jobs. Rates for such services shall be set by the Contractor and shall be similar to those offered in adjacent counties and by similar operators. Topography, distance, and other factors that are peculiar to the service area will be taken into consideration in setting said fees. Contractor shall provide a fee schedule to the County identifying the costs associated with the different types and sizes of containers for the different areas of the service area. Special Users shall have the right to appeal to the Board of County Commissioners in same manner as set forth in 6.2.2.

6.4 Special Prices. In addition to the Base Rate, the County shall pay to Contractor the following:

6.4.1 Tires. The County Commissioners will discourage the disposal of tires in the waste stream. Incidental tires will be removed and disposed of at an additional fee to the County of Eighty-Five and No/100 Dollars (\$85.00) per ton.

6.4.2 White Goods. White goods will be disposed of at an additional fee to the County of Ten and No/100 Dollars (\$10.00) an item. In the event the Contractor charges a user for a white good item, the Contractor shall not also charge the County for the same item.

6.4.3 Incidental Hazardous Wastes. The County must pay for the disposal of incidental hazardous waste. If the generator of the hazardous waste can be determined, then the generator shall be responsible for reimbursing the County for said costs. The County shall discourage any use of the County waste stream from hazardous waste.

6.5 County Designated Users. The Contractor may enter into agreements with various entities, including governmental agencies or other counties for the collection of solid waste within the Service Area (hereinafter referred to as "Designated User"). If this Contract calls for collection of solid waste at a particular site described in Exhibit B, but the general public has the use of that site the Contractor's compensation for servicing that site shall be included in the base rate hereunder. However, if a specific special site is requested by a governmental entity and that entity controls the use of that site, the Contractor may treat that request as a separate commercial account.

## VII. ANNUAL COMPENSATION ADJUSTMENTS

7.1 Annual Compensation Adjustments. The rate of compensation to Contractor shall increase each year as follows:

7.1.1 Increase of Base Rate. Contractor shall be entitled to a cost of living adjustment to the Base Rate. On the first day of October of each year, the Base Rate, described above, shall increase by the total annual increase in the Consumer Price Index (U.S. All items, 1982-84=100 - CUUR0000SA0) not seasonally adjusted as identified by the U.S. Department of Labor Bureau of Labor Statistics. The time period for determining the increase shall be from May of the prior year to May of the current year to allow for budgeting. (For example, on November 1, 2012 the Base Rate shall be increased by the total CPI-U from November 2011 to November 2012). The previous Base Rate plus any increase shall create a new base rate for the following years.

7.2 Fuel Credit. Given the volatility of fuel prices and insurance rates, the Contractor shall be entitled to a fuel credit each quarter (January 1 through March 31 being the first Quarter) to reimburse Contractor for increased costs should the Contractor's fuel costs for that quarter increase by more than 5% over the previous quarter. If the Contractor is entitled to a fuel credit then the amount of the fuel credit shall be the total quarterly increase. The fuel credit for the first and second quarters shall be paid on July 31<sup>st</sup> and the fuel credit for the third and fourth quarters shall be paid on January 31<sup>st</sup> of each year. It shall be the responsibility of the Contractor to provide the County with receipts to demonstrate that its overall fuel costs for each quarter has increased. The Contractor shall be eligible for the fuel credit based on the contract rate set forth in the 2005 contract entered into between the County and the Contractor. That rate was \$2.59 per gallon.

7.2.1 Conversely, should the fuel costs for a quarter decrease by more than 5% from the prior quarter then the County shall be entitled to a reduction in the payment to Contractor for all such quarterly decreases.

7.3 Insurance Credit. The parties recognize that insurance costs are volatile. If the Contractor's insurance costs increase by more than 5% in a calendar year, then the County shall reimburse the Contractor for the increase costs of insurance that exceed 5%. For purposes of calculations, the costs of insurance for 2011 shall be the base rate in determining future increases. It is incumbent upon the Contractor to provide the County with adequate documentation to establish the base rate as well as any increases in insurance costs. The reimbursement shall be paid to the Contractor when the October payment is made.

7.4 Tipping Fees. Any increase or decrease in tipping fees shall be passed on to the County and shall be added or subtracted so as to adjust the monthly Base Rate paid to Contractor to either an increase or decrease in tipping fees. It is incumbent upon the Contractor to provide the County with sufficient records to demonstrate the increase or decrease in tipping fees.

7.5 Extraordinary Changes. Once a year, the Contractor may seek an additional increase in the Base Rate based upon an increase in total tonnage of garbage collected or an increase in locations that were added to the Service Area; an increase in permit fees and/or taxes; and for any increase in costs of operation resulting from the enactment, adoption, promulgation, modification, repeal or change in interpretation of any federal, state, county, or other local law, ordinance, rule, code, regulation or similar legislation which directly impacts the solid waste industry, including, but not limited to, the handling, processing, transportation, and disposal of waste. At the time of the request, the Contractor shall provide to the County the increase requested and provide the County with sufficient documentation to demonstrate the need for the increase in price which said documentation shall include, at a minimum, monthly tonnage records of all solid waste attributable to Idaho County, records of all tonnage shipped to designated landfill, labor costs, and changes in mileage. The increase shall be limited to the actual increased costs to Contractor resulting from an increase in garbage collection. The

County shall have sixty (60) days to respond to the request. New rates would be effective within sixty (60) days after the approval of the request.

7.6 The Contractor shall provide the County with the price per gallon of fuel and the price of insurance premiums at the time of the execution of this Contract.

7.7 If the parties are unable to reach an agreement as to a requested price adjustment, the dispute is subject to binding arbitration pursuant to Section XIX hereof and either party may request arbitration on that issue.

#### VIII. CONTRACTOR'S CONTROL OF CONTRACT SERVICES

8.1 Except as specifically required in this Contract, the Contractor shall have exclusive right to control the services and work performed under this Agreement. The Contractor is an independent contractor in all respects and as such shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and sub-contractors. Nothing in this Agreement shall be construed as creating a partnership or joint venture between the County and Contractor or giving the County a duty to supervise or control the acts or omissions of the Contractor and/or its agents or employees.

8.2 Existing Landfill. Contractor will not seek reimbursement for any costs associated with the closure of Contractor's existing landfill should closure be necessary pursuant to the change in state and/or federal regulations. However, should such closure occur, then the Contractor shall have the right to seek additional compensation resulting from an increase in costs associated with the transporting and disposal of additional waste. If the parties cannot agree to a change in compensation, the dispute is subject to binding arbitration pursuant to Section XIX hereof and either party may request arbitration on that issue.

#### IX. INSURANCE PROVISION

9.1 The Contractor shall procure and maintain, at its own expense, liability and workers' compensation insurance. A certificate of insurance shall be filed with the County at all times during the term of this Contract. The certificate of insurance shall contain a provision that coverage afforded under the policies will not be canceled until at least 30 days prior written notice shall have been given to the County prior to the commencement of the contract. General liability and comprehensive insurance shall be maintained with a policy limit of not less than One Million and No/100 Dollars (\$1,000,000.00) for all damages arising out of bodily injury, including dental, at any time resulting therefrom, sustained by any one person in any one accident, and a limit of liability of not less than Two Million and No/100 Dollars (\$2,000,000.00) aggregate for any such damages sustained by two or more persons in any one accident. The Contractor shall also carry excess liability or umbrella coverage with at least One

Million and No/100 Dollar (\$1,000,000.00) policy limits. The County shall be named as an additional insured on any policy of liability insurance.

The Contractor shall procure and maintain at his own expense, in accordance with the provisions of the laws of the State of Idaho Workers' compensation insurance including occupational disease provisions for all of the Contractor's employees engaged in work under this contract. Proof of continuous workers' compensation insurance shall be likewise posted with the County at all times. In case any work is sublet by the Contractor, the Contractor shall require such subcontractor to provide workers' compensation insurance. In case any class of employees engaged in hazardous work under this Contract is not protected under the worker's compensation statutes, the Contractor shall provide for adequate and suitable insurance for the protection of such employees.

9.2 The County may choose to purchase additional liability insurance to cover risks of solid waste spillage in the County's sole discretion and at the County's sole cost.

#### X. INDEMNIFICATION

10.1 The Contractor shall indemnify and hold the County harmless from any and all losses from all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought for recovery against the County by reason of negligence of the Contractor's agents or employees in the performance of this Contract.

#### XI. CONTROL OF WASTE STREAM

11.1 The Contractor shall have the exclusive right of collection, salvage, and/or recycling with respect to the solid waste and rubbish deposited in the Container Sites described above, brought to the transfer station or collected by the Contractor in the performance of private service contracts. Pursuant to this Agreement, the County retains ownership of all non-sorted refuse placed in the transfer trailer for delivery to the disposal site. Scavenging will not be permitted.

11.2 The County reserves the right to divert to recycling programs all recyclable materials as defined in paragraph 1.1.7 from the rural and non-incorporated areas in Idaho County designated to Contractor. The term "County Recyclable Materials" will be used to identify the materials reserved to County.

County Recyclable Materials do not include Recyclable Materials directly received or collected by Contractor, including any Recyclable Materials brought to Contractor's container sites or transfer station and Recyclable Materials collected by Contractor pursuant to private contracts or contracts with other counties or incorporated cities.

11.3 Contractor and County further agree that County may, by separate Resolution, at any time during the initial or any extended term of this Contract, impose a surcharge upon Contractor for an amount not more than \$7.50 per ton for the remaining duration of the initial term or any extended term of this contract, for all tonnage diverted from the waste Stream from the areas of rural and non-incorporated areas in Idaho County designated to Contractor.

If the County so elects to impose that surcharge, then Contractor will pay the County, within 30 days of receipt of billing and the supporting documentation listed below, the sum of \$7.50 per ton for County Recyclable Materials that have been:

11.3.1 Handled by the non-profit and volunteer Idaho County Recycling program operated at no cost to the county; and

11.3.2 Documented to be separated prior to weighing from the waste received from other counties, incorporated cities, and areas or customers served by Contractor under private service agreements; and

11.3.3 Weighed in a manner and on scales agreed to by County and Contractor.

11.4 If mutual agreement cannot be reached on any matter pertaining to the surcharge, under this section, then the parties agree to submit the matter to binding arbitration pursuant to paragraph 19.1 hereinbelow.

## XII. BREACH OF CONTRACT

12.1 The contract may be terminated by the County if, after two (2) written notices of the same violation, not less than thirty (30) days apart, the Contractor fails to correct major violations of federal or state standards, or should the Contractor fail to perform any duties imposed upon it hereby, except by acts of God or when the failure to perform said duty is the result of a change in law for which the Contractor has no control over.

## XIII. JURISDICTION

13.1 The terms of this Contract apply only to the Service Area described in Exhibit A. The Contractor is responsible and is free to contract with incorporated cities within Idaho County.

## XIV. COMPLIANCE AND REGULATIONS

14.1 Contractor will be responsible for complying with all federal and state regulations concerning disposal of solid waste.

#### XV. FUTURE FRANCHISE

15.1 The initial term of this Contract is ten (10) years. When the term of this contract is completed, the Contractor shall have the right to renegotiate with the County in good faith regarding renewal of this contract for 10 years.

15.2 At any time during the initial term that Contractor is facing significant financial expenses that require an extended term to justify and amortize the cost of capital expenses related specifically to duties under this contract, an extended term of up to 10 years may be provided to Contractor by County on such terms and conditions as are mutually acceptable to the parties. The parties agree to negotiate such terms and conditions in good faith.

15.3 If Contractor and County are unable to reach agreement on any dispute under this paragraph then any difference will be submitted to arbitration pursuant to Section 19.1 hereof.

#### XVI. ENTIRE CONTRACT

16.1 This Agreement constitutes the entire understanding between the County and Contractor and cancels and supersedes all prior negotiations, representations, understandings, and agreements, written or oral, with respect to the subject matter hereof.

#### XVII. TERMINATION OF CONTRACT

17.1 This Contract shall terminate in case of bankruptcy or insolvency of the Contractor. The contract may also be terminated by the County if, after two (2) written notices of the same violation, not less than thirty (30) days apart, the Contractor fails to correct any material and/or substantial violations of federal or state laws. In case of termination of this Contract, should the County desire to continued use of the transfer station and non-MSW landfill, then the Contractor shall operate the transfer station and non-MSW landfill for the County for a period of six (6) months from the termination date with the County paying Contractor a reasonable fee for the use of the non-MSW landfill and/or transfer station. If the parties fail to agree upon a reasonable price, then the County may submit the matter for arbitration at its own expense in the manner provided below.

#### XVIII. ASSIGNMENT

18.1 No part of this Contract shall be assigned or sublet by the Contractor without the express written consent of the County, with such consent shall not be unreasonably withheld.



## XIX. DISPUTE RESOLUTION

19.1 Arbitration. Any dispute arising under the terms of this Contract shall be settled by binding arbitration in compliance with the laws of the State of Idaho. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association but not under the auspices of the American Arbitration Association unless the parties expressly agree thereto. Unless otherwise agreed upon by both parties, all arbitrated disputes shall be heard and decided by one arbitrator. Should the parties not agree on the selection of the arbitrator then the arbitrator shall be chosen by the Administrative District Judge for the Second Judicial District of the State of Idaho. The decision of the arbitrator shall be binding upon the parties, and non-appealable.

19.2 Arbitrator's Fees Costs. Arbitration costs shall usually be split unless the arbitrator finds that a position has been urged frivolously or without foundation at which time attorney fees may be awarded against the non-prevailing party.

## XX. AMENDMENTS

20.1 This Agreement shall not be amended or modified except by written instrument authorized and executed by the parties hereto.

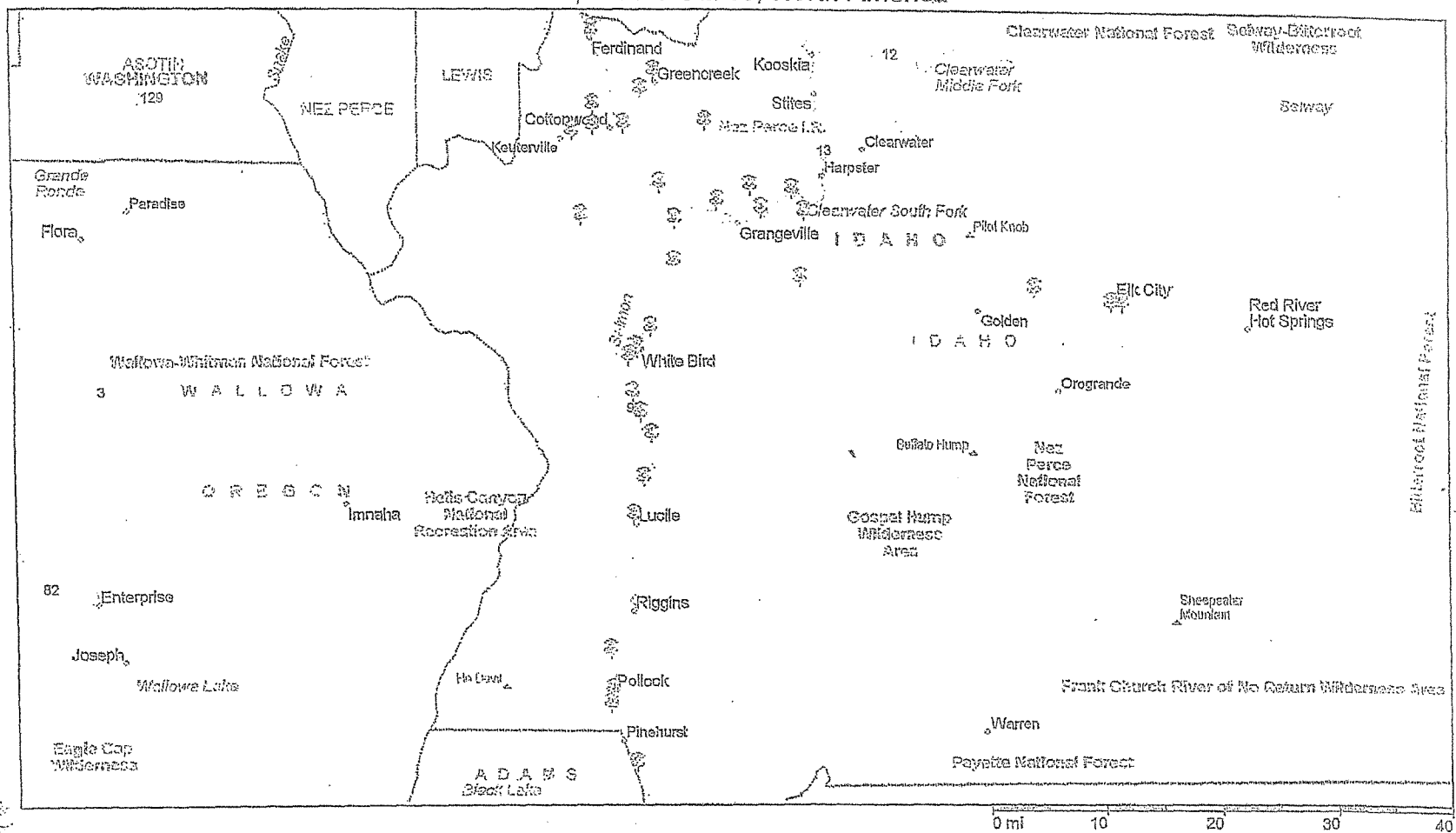
## XXI. SEVERABILITY

21.1 If any term or provision of the Contract is held invalid, the remainder of such terms or provision of this Contract shall not be affected, if such remainder would then continue to conform to the terms and requirements of applicable law.

## XXII. NO WAIVER

22.1 Failure by either party to enforce any condition, requirement, responsibility, or provision of the contract shall not be construed as a waiver of the party's right to subsequently enforce that condition, requirement, responsibility, or provision of this Contract or to fully enforce any other condition, requirement, responsibility, or provision.

# Idaho, United States, North America



# WALCO RURAL COUNTY CONTAINERS

## for Idaho County

Container Sites	# of Containers	Size of Containers	Days of Pickup
Ferdinand	2	10 yard container	M, T, Th, F, Sun
Greencreek (4-Corners)	2	6 yard container	M, Th, Sun
Greencreek Community Hall	1	10 yard container	M, Th, Sun
4-Corners on 7 mile	2	6 yard container	M, Th, F, Sun
Cottonwood Sewer Ponds	5	6 yard container	M, T, W, Th, F, Sun
Correctional Center Road	2	10 yard container	M, Th, Sun
	1	6 yard container	
Monastery Road	3	6 yard container	M, W, F, Sun
Keuterville	1	10 yard container	M, W, F, Sun
Fenn	2	6 yard container	M, T, W, Th, F, Sat, Sun
Tolo Lake	2	6 yard container	M, W, F, Sat, Sun
Country Court Trailer Park	1	6 yard container	M, Th, F, Sun
Frei's Containers	2	6 yard container	M, T, W, Th, F, Sat, Sun
Top of Harpster Grade	2	6 yard container	M, T, W, Th, F, Sat, Sun
<b>BELOW AREA drops to once a week during late fall/winter months</b>			
*Middle of Harpster Grade	1	6 yard container	T, F
*Dewey Mine	1	6 yard container	T, F
*South Fork Station	1	6 yard container	T, F
*Newsome Creek	1	10 yard container	T, F
*Elk City Site	9	10 yard container	T, F
*Dixie Containers	3	Mobile 6 yard containers pickup at Elk City Site	T, F
<b>BELOW AREA DONE with 2 Trucks on Wednesday (*)</b>			
*Bottom of Whitebird Hill	1	8 yard container	M, W, F, Sat, Sun
*Above Hoot's Café	1	6 yard container	M, W, F, Sat
*Hoot's Café	1	6 yard container	M, W, F, Sat
*Below Hoots - Old Hwy 95	4	6 yard container	M, W, F, Sat
*Skookumchuck	1	6 yard container	M, W, F, Sat
*John Day	1	6 yard container	M, W, F, Sat
*Twin Bridges	1	6 yard container	M, W, F, Sat
*Slate Creek	1	10 yard container	M, W, F, Sat
*Lucile	1	8 yard container	M, W, F, Sat
	1	10 yard container	
*Lower Pollock	5	6 yard container	M, W, F, Sat
	2	10 yard container	
*Upper Polluck	4	6 yard container	M, W, F, Sat
*Rainbow Bend	1	6 yard container	M, W, F, Sat
*Elk Lake Road	1	8 yard container	M, W, F, Sat

**EXHIBIT**

3  
EXHIBIT B-35

	1	10 yard container	
*Boundary Line Road	1	6 yard container	M, W, F, Sat
BELOW AREA has twice a week service during summer months only			
*Graves Creek	2	6 yard container	M, F
Walco Transfer Station	1	10 yard container	M, T, W, Th, F, Sat, Sun

EXHIBIT B

EXHIBIT B-36

# EXHIBIT C

SIMMONS SANITATION INC.  
P.O. BOX 1523  
KAMIAH, ID 83536

.....

# SIMMONS SANITATION INC.

10/12/13

Idaho County

Simmons Sanitation base price \$77,202.00 per month.

This includes the collection and disposal (Simmons Sanitation transfer station) of solid waste using the route sheet provided in Idaho Counties proposal specifications and locking in 4500 tons per year, if tonnage goes over this the county will pay the increased cost of additional tonnage.

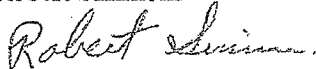
Simmons Sanitation will purchase refuse trucks and dumpsters to perform collection of solid waste per Idaho Counties proposal specifications.

Building of the consolidated sites will be negotiated with county for the cost of each site and is not included in this base price.

Simmons Sanitation current contracts: City of Kamiah, City of Kooskia, City of Stites, Lewis County, Idaho County, State of Idaho, Nezperce Tribe and other Federal Agencies.

Simmons also owns NADL Enterprises that has current contracts with City of Orofino, City of Weippe, City of Peck, Clearwater County, State of Idaho, Nezperce Tribe, and other Federal Agencies.

Robert Simmons



Simmons Sanitation

OFFICE - 208-935-2617 Kamiah FAX - 208-935-7876

EMAIL - [simmons.nadl@yahoo.com](mailto:simmons.nadl@yahoo.com)

WEB - [www.simmons-nadl.com](http://www.simmons-nadl.com)

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EXHIBIT C-2

IDAHO COUNTY DISTRICT COURT  
FILED  
AT 9:09 O'CLOCK A.M.

APR 17 2013

DOCKETED

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

Bentley G. Stromberg  
Joshua D. McKarcher  
CLEMENTS, BROWN & McNICHOLS, P.A.  
321 13th Street  
Lewiston, Idaho 83501  
(208) 743-6538  
(208) 746-0753 (Facsimile)  
ISB No. 3737  
ISB No. 9180

*Attorneys for Defendant Idaho County*

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO**

WALCO, INC., an Idaho corporation,

Plaintiff,

vs.

COUNTY OF IDAHO, a political  
subdivision of the State of Idaho;

and

SIMMONS SANITATION SERVICE, INC.,  
an Idaho corporation,

Defendants.

Case No. CV-2013-42360

ANSWER OF DEFENDANT  
IDAHO COUNTY

Fee Category: Exempt – Idaho Code  
§ 67-2301

Defendant, Idaho County, by and through its attorneys, Bentley G. Stromberg and Joshua D. McKarcher of Clements, Brown & McNichols, P.A., answers Plaintiff's Complaint as follows:

1. Idaho County admits paragraph 1.

ANSWER OF DEFENDANT  
IDAHO COUNTY

2. Idaho County admits paragraph 2.

3. Idaho County admits paragraph 3.

4. Idaho County admits this Court has jurisdiction over this action and denies the remainder of paragraph 4.

5. Idaho County admits venue is proper in Idaho County and denies the remainder of paragraph 4.

6. Answering paragraph 6, Idaho County denies the first sentence due to the ambiguity of the word "franchise" and admits the second sentence.

7. Answering paragraph 7, Idaho County admits that in early 2012, it negotiated terms for a renewal contract exclusively with plaintiff, but denies that the negotiations related to a contract which would cover all of the unincorporated areas of Idaho County.

8. Idaho County admits that Walco and Idaho County were unable to negotiate a mutually acceptable contract and denies the remainder of paragraph 8.

9. Idaho County admits that Walco suggested that Idaho County request contract proposals and denies the remainder of paragraph 9.

10. Idaho County admits that Idaho law allows, but does not require, competitive bidding for solid waste disposal services and denies the remainder of the paragraph.

11. Idaho County admits paragraph 11, except that Exhibit A is incomplete. Exhibit pages B-21 through B-36 should follow Exhibit page A-5 and be a part of Exhibit A and not a part of Exhibit B.

12. Idaho County denies paragraph 12.

13. Idaho County denies paragraph 13.

14. Idaho County denies paragraph 14.



15. Idaho County denies paragraph 15.
16. Idaho County denies paragraph 16.
17. Idaho County admits that Walco and Simmons Sanitation were the only parties to submit responses to the RFP and denies the remainder of the paragraph.
18. Idaho County admits that Exhibit B contains a true and accurate copy of Walco's response to the RFP, except that Exhibit pages B-21 through B-36 should follow Exhibit page A-5 and be a part of Exhibit A and not a part of Exhibit B. Idaho County denies the remainder of paragraph 18.
19. Idaho County denies paragraph 19.
20. Idaho County admits that Exhibit C is a true and accurate copy of Simmons Sanitation's response to the RFP. Idaho County denies the remainder of paragraph 20.
21. Idaho County denies paragraph 21.
22. Idaho County denies paragraph 22, although it admits that the price proposed by Simmons was less than the price proposed by Walco and also that Walco's proposal included materially different contractual terms than those preferred by Idaho County.
23. Idaho County denies paragraph 23.
24. Idaho County denies paragraph 24.
25. Idaho County denies paragraph 25.
26. Idaho County denies paragraph 26.
27. Idaho County denies paragraph 27.
28. Idaho County denies paragraph 28.
29. Idaho County denies paragraph 29.
30. Idaho County denies paragraph 30.

31. Idaho County denies paragraph 31.

32. Idaho County admits that Simmons Sanitation requested and received Walco's response to the RFP on or about January 24, 2013 by a public records request. Idaho County denies the remainder of paragraph 32.

33. Idaho County incorporates and realleges its responses to the above paragraphs.

34. Idaho County denies paragraph 34.

35. Idaho County denies paragraph 35.

36. Idaho County denies paragraph 36.

37. Idaho County denies paragraph 37.

38. Idaho County denies paragraph 38.

39. Idaho County denies paragraph 39.

40. Idaho County denies paragraph 40.

41. Idaho County denies paragraph 41.

42. Idaho County denies paragraph 42.

43. Idaho County denies paragraph 43.

44. Idaho County denies paragraph 44.

45. Idaho County denies paragraph 45.

46. Idaho County admits it issued an RFP and denies the remainder of paragraph 46 due to its ambiguity.

47. Idaho County denies paragraph 47.

48. Idaho County denies paragraph 48.

49. Idaho County denies paragraph 49.

50. Idaho County admits that its contract with Simmons Sanitation has a 10-year period. Idaho County denies the remainder of paragraph 50.

51. Idaho County denies paragraph 51.

52. Idaho County denies paragraph 52.

53. Idaho County denies paragraph 53.

54. Idaho County denies paragraph 54.

55. Idaho County denies paragraph 55.

56. Idaho County denies paragraph 56.

57. Idaho County denies paragraph 57.

58. Idaho County denies paragraph 58.

59. Idaho County admits that Simmons Sanitation requested and received Walco's response to the RFP on or about January 24, 2013 by a public records request. Idaho County denies the remainder of paragraph 59.

60. Idaho County denies paragraph 60.

61. Idaho County denies paragraph 61.

### AFFIRMATIVE DEFENSES

#### I.

Idaho County is immune from liability under Idaho Code §§ 6-904(1) and (3) and Idaho Code § 9-346.

#### II.

Further investigation and discovery may reveal that Plaintiff's first and second causes of action are barred pursuant to the doctrines of waiver and estoppel, unclean hands, and other equitable defenses.

ATTORNEY'S FEES AND COSTS

Idaho County is entitled to recover its attorney's fees and costs pursuant to Idaho Code §§ 6-918A, 12-117, 12-120, 12-121, and Idaho Rules of Civil Procedure 54(d) and (e).

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial of all issues which may appropriately be tried to a jury. Defendant will not stipulate to a jury less than twelve (12) persons.

DATED this 16th day of April, 2013.

CLEMENTS, BROWN & McNICHOLS, P.A.

By 

BENTLEY G. STROMBERG

Attorneys for Defendant Idaho County

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

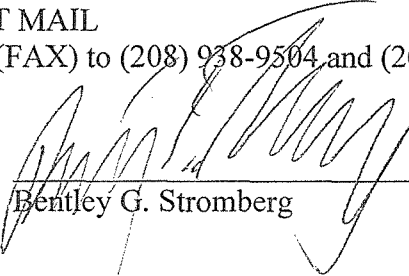
Dennis M. Charney  
Charney and Associates, PLLC  
1191 East Iron Eagle Drive  
Eagle, ID 83616

*Attorney for Plaintiff Walco, Inc.*

David Risley  
1443 Idaho Street  
Lewiston, ID 83501

*Attorney for Defendant Simmons Sanitation Service, Inc.*

  X   U.S. MAIL  
      HAND DELIVERED  
      OVERNIGHT MAIL  
      TELECOPY (FAX) to (208) 938-9504 and (208) 743-5307

  
\_\_\_\_\_  
Bentley G. Stromberg

MAY 03 2013

DOCKETED

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DAVID R. RISLEY  
RISLEY LAW OFFICE, PLLC  
P. O. Box 1247  
1443 Idaho Street  
Lewiston, ID 83501  
(208) 743-5338  
(208) 743-5307 (Fax)  
[david@risleylawoffice.com](mailto:david@risleylawoffice.com)  
ISB No. 1789

Attorney for Defendant Simmons Sanitation Service, Inc.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho Corporation,

Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision  
of the State of Idaho, and SIMMONS  
SANITATION SERVICE, INC., an Idaho  
Corporation,

Defendants.

CASE NO. CV2013-42360

ANSWER TO COMPLAINT OF  
DEFENDANT SIMMONS SANITATION  
SERVICE, INC.

Defendant, SIMMONS SANITATION SERVICE, INC., an Idaho Corporation  
(hereinafter "Simmons"), by and through its attorney of record, David R. Risley of Risley Law  
Office, PLLC, answers the Plaintiff's *Complaint and Demand for Jury Trial* (hereinafter  
"Complaint") as follows:

ANSWER TO COMPLAINT OF DEFENDANT SIMMONS—Page 1  
n/c/plead/answercomplaintdefsimmons—nhh

RISLEY LAW OFFICE, PLLC  
LEWISTON, IDAHO

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AFFIRMATIVE DEFENSES

RESERVATION OF AFFIRMATIVE DEFENSES, CLAIMS, ETC.

Defendant Simmons has neither commenced nor completed discovery and hereby reserves the right to plead affirmative defenses, counterclaims, and third-party complaints as warranted by the facts of this case. Until such discovery is completed, the Defendant Simmons denies each and every allegation of the Plaintiff's Complaint unless and explicitly to the limited extent that such allegations are specifically admitted hereinbelow.

ANSWER

In Answer to Plaintiff's Complaint, Defendant Simmons admits and denies as follows:

1. Simmons denies paragraph 1 except to the extent that Walco, Inc., is a corporation formed in 1972 and has a current corporate address of 1206 South Hall St. Grangeville, Idaho 83530.

2. Simmons admits paragraph 2.

3. Simmons admits paragraph 3.

4. Simmons admits this Court has jurisdiction over this action and denies the remainder of paragraph 4.

5. Simmons admits venue is proper in Idaho County and denies the remainder of paragraph 5.

6. Answering paragraph 6, Simmons denies the first sentence due to the ambiguity of the word "franchise" and admits the second sentence.

1           7.     Answering paragraph 7, Simmons admits that in early 2012, Idaho County  
2 negotiated terms for a renewal contract exclusively with Plaintiff, but denies that the negotiations  
3 related to a contract which would cover all of the unincorporated areas of Idaho County.  
4

5           8.     Simmons admits that Walco and Idaho County were unable to negotiate a  
6 mutually acceptable contract and denies the remainder of paragraph 8.

7           9.     Simmons admits that Walco suggested that Idaho County request contract  
8 proposals and denies the remainder of paragraph 9.

9           10.    Simmons admits that Idaho law allows, but does not require, competitive bidding  
10 for solid waste disposal services and denies the remainder of the paragraph.  
11

12           11.    Simmons admits paragraph 11, except that Exhibit A is incomplete. Exhibit  
13 pages B-21 through B-36 should follow Exhibit page A-5 and be a part of Exhibit A and not a  
14 part of Exhibit B.

15           12.    Simmons denies paragraph 12.

16           13.    Simmons denies paragraph 13.

17           14.    Simmons denies paragraph 14.

18           15.    Simmons denies paragraph 15.

19           16.    Simmons denies paragraph 16.  
20

21           17.    Simmons admits that Walco and Simmons were the only parties to submit  
22 responses to the RFP and denies the remainder of the paragraph.

23           18.    Simmons admits that Exhibit B contains a true and accurate copy of Walco's  
24 response to the RFP, except that Exhibit pages B-21 through B-36 should follow Exhibit page A-  
25



1 5 and be a part of Exhibit A and not a part of Exhibit B. Simmons denies the remainder of  
2 paragraph 18.

3 19. Simmons denies paragraph 19.

4 20. Simmons admits that Exhibit C is a true and accurate copy of Simmons' response  
5 to the RFP. Simmons denies the remainder of paragraph 20.  
6

7 21. Simmons denies paragraph 21.

8 22. Simmons denies paragraph 22, although it admits that the price proposal by  
9 Simmons was less than the price proposed by Walco and Simmons' bid accepted all contractual  
10 terms preferred by Idaho County; in addition, Simmons admits that Walco's proposal included  
11 materially different contractual terms than those preferred by Idaho County.  
12

13 23. Simmons denies paragraph 23.

14 24. Simmons denies paragraph 24.

15 25. Simmons denies paragraph 25.

16 26. Simmons denies paragraph 26.

17 27. Simmons denies paragraph 27.

18 28. Simmons denies paragraph 28.

19 29. Simmons denies paragraph 29.

20 30. Simmons denies paragraph 30.

21 31. Simmons denies paragraph 31.  
22  
23  
24  
25

1           32.     Simmons admits that it requested and received Walco's response to the RFP on or  
2 about January 24, 2013 by a public records request. Simmons denies the remainder of paragraph  
3 32.

4           33.     Simmons incorporates and realleges its responses to the above paragraphs.

5           34.     Simmons denies paragraph 34.

6           35.     Simmons admits that Walco and the County could not agree on terms for a  
7 contract and that Walco suggested that Idaho County request contract proposals and denies the  
8 remainder of paragraph 35.

9           36.     Simmons denies paragraph 36.

10          37.     Simmons denies paragraph 37 as factually inaccurate and argumentative.

11          38.     Simmons denies paragraph 38.

12          39.     Simmons denies paragraph 39.

13          40.     Simmons denies paragraph 40.

14          41.     Simmons denies paragraph 41.

15          42.     Simmons denies paragraph 42.

16          43.     Simmons denies paragraph 43.

17          44.     Simmons denies paragraph 44.

18          45.     Simmons denies paragraph 45.

19          46.     Simmons admits Idaho County used an RFP and denies the remainder of  
20 paragraph 46 due to its ambiguity.

21          47.     Simmons denies paragraph 47.

1 48. Simmons denies paragraph 48.

2 49. Simmons denies paragraph 49.

3 50. Simmons admits that its contract with Idaho County has a 10-year period.

4 Simmons denies the remainder of paragraph 50.

5 51. Simmons denies paragraph 51.

6 52. Simmons denies paragraph 52.

7 53. Simmons denies paragraph 53.

8 54. Simmons denies paragraph 54.

9 55. Simmons denies paragraph 55.

10 56. Simmons denies paragraph 56.

11 57. Simmons denies paragraph 57.

12 58. Simmons denies paragraph 58.

13 59. Simmons admits it requested and received Walco's response to the RFP on or  
14 about January 24, 2013 by a public records request to Idaho County. Simmons denies the  
15 remainder of paragraph 59.

16 60. Simmons denies paragraph 60.

17 61. Simmons denies paragraph 61.

18 **ATTORNEY'S FEES AND COSTS**

19 Simmons is entitled to recover its attorney's fees and costs pursuant to Idaho Code §§ 6-  
20 918A, 12-117, 12-120, 12-121, and Idaho Rules of Civil Procedure 54(d) and (e).


1 DEMAND FOR JURY TRIAL

2 Demand is hereby made for a trial of all issues which may appropriately be tried to a jury.

3 Defendant will not stipulate to a jury less than twelve (12) persons.

4 DATED this 2<sup>nd</sup> day of May, 2013.

5 RISLEY LAW OFFICE, PLLC  
6 Attorney for Defendant Simmons Sanitation Service, Inc.

7 By:   
8 DAVID R. RISLEY  
9 ISB NO. 1789  
10

11 CERTIFICATE OF MAILING

12 I certify that on May 2, 2013, at my direction, the foregoing *Answer to Complaint of*  
13 *Defendant Simmons* was served on the following in the manner shown:

14 Counsel for Plaintiffs: (copy)

15 Dennis M. Charney  
16 Charney and Associates, PLLC  
17 1191 East Iron Drive  
Eagle, ID 83616

[ ] Mailed, postage prepaid  
[ ] Messenger  
[✓] Fax

18 Counsel for Defendant Idaho County: (copy)

19 Bentley G. Stromberg  
20 Joshua D. McKarcher  
21 Clements, Brown & McNichols, P.A.  
321 13<sup>th</sup> Street  
Lewiston, ID 83501

[ ] Mailed, postage prepaid  
[ ] Messenger  
[ ] Fax  
[✓] Hand Delivered

22   
23 DAVID R. RISLEY  
24

MAY 22 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy Ackerman*  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
COUNTY OF IDAHO, a political )  
subdivision of the State of Idaho, and )  
 )  
SIMMONS SANITATION SERVICE, )  
INC., an Idaho corporation, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV-42360

ORDER SETTING TRIAL  
and SCHEDULING ORDER

As a result of an informal planning and scheduling conference conducted by telephone conference on May 21, 2013, with counsel for each of the respective parties participating, the Court enters the following ORDERS:

ORDER SETTING TRIAL

It is ORDERED that a jury trial shall commence at 9:00 A.M. on February 24, 2014, at the Idaho County Courthouse in Grangeville, Idaho. Counsel shall be present in chambers at 8:30 A.M. on the first morning of trial. This trial is estimated to run five days and will be tried on a 9:00 A.M. to 5:00 P.M. schedule.

SCHEDULING ORDER

It is ORDERED:

(1) On or before August 1, 2013, plaintiff shall disclose to defendants, in writing, the names and addresses of all lay witnesses whom plaintiff intends to call at trial;

(2) On or before October 1, 2013, defendants shall disclose to plaintiff, in writing, the names and addresses of all lay witnesses whom defendants intend to call at trial;

(3) Plaintiff shall disclose to defendants, in writing, all expert witnesses **IN THE MANNER OUTLINED IN RULE 26(b)(4)(A)(i)**, disclosing each person expected to be called as an expert witness, the subject matter on which each expert is expected to testify, the substance of the opinions on which each expert is expected to testify, and the underlying facts and data upon which each expert opinion is based no later than August 1, 2013; and defendants shall make a similar disclosure of each expert witness no later than October 1, 2013. Witnesses not disclosed **IN THIS MANNER** shall be subject to exclusion at trial.

(4) Any motion to amend the pleadings must be filed on or before August 1, 2013;

(5) All potentially dispositive motions including, but not limited to, motions for summary judgment and motions to dismiss, shall be served and filed not later than November 1, 2013;

(6) A formal Rule 16 I.R.C.P. pretrial conference shall be conducted by telephone conference, to be initiated by the Court, at 2:00 P.M. on January 27, 2014.

(7) Each party shall prepare a list of exhibits which it expects to offer excluding impeachment documents. A copy of the exhibit list should be provided to the Court and a copy to opposing counsel. Exhibits should be listed in the order that the party anticipates they will be offered;

(8) Exhibit labels can be obtained from Idaho County court clerk, Kathy Johnson. Each party shall affix labels to their exhibits before trial. Plaintiff's exhibits should be marked with the yellow labels, in numerical sequence. Defendant's exhibits should be marked with blue labels, in alphabetical sequence. If there are more than twenty-six

exhibits for the defendant, mark them "AA", "BB", etc., keeping in mind exhibits that may be grouped together for easy reference. The civil action number of the case should also be placed on each of the exhibit labels. Exhibits should be lodged and served as required by this pretrial order;

(9) Counsel shall provide a copy of each exhibit to opposing counsel and to the Court. Copies should be made after the labels are marked and attached to the original exhibit. To expedite trial, each exhibit to be offered should be viewed by opposing counsel prior to trial and determination made as to whether an objection will be lodged against the exhibit;

(10) Counsel shall provide each other with a list of their witnesses and shall provide the Court with two copies of each list of witnesses, one of which will be provided to the Court Reporter to avoid the need for asking the spelling of the witnesses' names. Witnesses should be listed in the order that counsel anticipate calling them;

(11) Exhibits and exhibit lists shall be prepared and exchanged between counsel and lodged with the Court at least seven (7) days before trial;

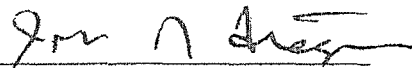
(12) Witness lists shall be prepared and exchanged between counsel and filed with the Court at least seven (7) days before the trial unless another date is specified in this Order;

(13) Each party shall serve and lodge with the clerk of the court, at least seven (7) days prior to trial, all requested jury instructions which requested instructions must comply with the requirements of Rule 51, I.R.C.P.;

(14) Failure to timely comply in any respect with the provisions of this order shall subject the non-complying parties or their counsel to sanctions which may include: (1) contempt of court; (2) vacation of the trial with costs and attorney fees being awarded to

the complying party; (3) the entry of any order the Court deems just, including any orders provided for in Rule 37(b)(2)(A), (B), (C), (D), I.R.C.P.; (4) ordering the pleadings of a non-complying party stricken from the record and entry of default or dismissal against the non-complying party; (5) any combination of the foregoing.

DATED this 21<sup>st</sup> day of May 2013.

  
John R. Stegner  
District Judge

### CERTIFICATE OF SERVICE

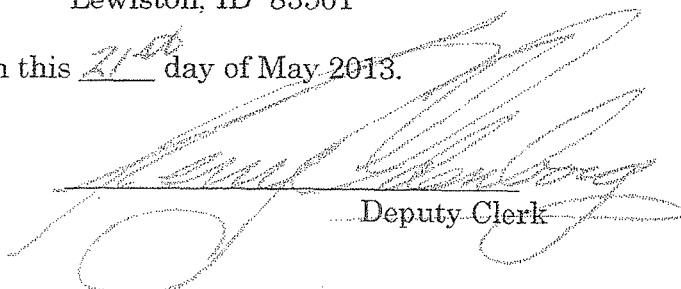
I do hereby certify that a full, true, complete and correct copies of the foregoing ORDER SETTING TRIAL and SCHEDULING ORDER was mailed to:

Dennis Charney  
Attorney at Law  
1191 E Iron Eagle Drive, #200  
Eagle, ID 83616

David R. Risley  
Attorney at Law  
PO Box 1247  
Lewiston, ID 83501

Bentley G. Stromberg  
Attorney at Law  
321 13<sup>th</sup> Street  
Lewiston, ID 83501

on this 21<sup>st</sup> day of May 2013.

  
Deputy Clerk



IDAHO COUNTY DISTRICT COURT  
FILED  
AT 3:21 O'CLOCK P.M.

SEP 17 2013

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
DEPUTY

DOCKET

DENNIS M. CHARNEY ISB# 4610  
CHARNEY AND ASSOCIATES, PLLC  
1191 East Iron Eagle Dr., Ste. #200  
Eagle, ID 83616  
Telephone: (208) 246-8850  
Facsimile: (208) 938-9504

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

WALCO, INC., an Idaho Corporation,

Plaintiff,

v.

COUNTY OF IDAHO, a political subdivision  
of the State of Idaho, and

SIMMONS SANITATION SERVICE, INC.,  
an Idaho corporation,

Defendants.

Case No. CV 42360

MARIETTA HOLMAN'S AFFIDAVIT  
IN SUPPORT OF MOTION FOR  
CHANGE OF VENUE

STATE OF IDAHO )

: ss.

COUNTY OF IDAHO )

Marietta Holman, having first been duly sworn, upon her oath deposes and says as follows:

MARIETTA HOLMAN'S AFFIDAVIT IN SUPPORT OF MOTION FOR  
CHANGE OF VENUE- 1

221

1. I am over 21 years of age and of sound mind. I have personal knowledge of the facts stated below.
2. I am the manager for Walco, Inc., and I also have personal knowledge of the litigation issues in this case.
3. Ever since Idaho County Commissioners contracted with Simmons' Sanitation, Idaho County citizens have expressed their views to me, and I have read some views in various newspapers. Many have called into our business and asked if they could do anything to help change the situation such as organize a recall, email, write letters, or start a phone call campaign. A public records request was made to Idaho County for all emails regarding solid waste. To my knowledge, such information is public record; however, I was told that the county would only give me a copy of this information at a price tag of \$89,000. These emails should be on file for me to view but are not at this time.
4. Some residents have called to tell us that they have contacted the County and that when they ask why Walco wasn't awarded the contract, the answer is Simmons' bid was the lowest. Of course, our lawsuit focuses on this issue because we believe that the Simmons' bid was actually more costly to the County. Reasons ranging from no transfer station, smaller dumpsters, less service, clear omissions of costs associated with the RFP requested total price, etc... Simmons was allowed to massage his bid price and sell ideas not associated with the RFP. All after publicly hearing our bid price and our other contract specifications.
5. During the bid process Skip Brandt provided two worksheets (Exhibit A) that he had made which analyzed several things: (1) Walco's increase over the years, (2) a comparison of Walco bid price monthly and annually to the current contract price, (3) Walco's

percentage of increase over the years, (4) a misleading line item that shows what Walco's percent would have been upon receiving the new contract and (5) an estimated Simmons' total cost—based on the proposal he gave after hearing ours. This worksheet was clearly biased, as Simmons has had the exact same increases over the years—mirroring everything Walco has received. Actually Simmons has received far more benefits than Walco has. However, this worksheet doesn't show Simmons' percentage increases over the years or what his contract price does to the percentage based off the current contract price, because it would be identical to what Skip prepared for Walco. Skip Brandt provided this information and publicly attacked our increases at the October 23, 2012 Meeting. I believe this worksheet was done to try and show Walco as a volatile company, the same company they say they wanted to negotiate with six months prior. This worksheet was a spiteful way to try and justify the only reason they could come up with for not choosing Walco as the successful bidder. A reason that we now speculate to be malicious.

6. From the first worksheet to the second worksheet, an addition was made to Walco's information. The second worksheet now included information from a 2006 binding arbitration. Skip Brandt added a figure showing that in 2006 Walco requested \$96,000 in arbitration but did receive this amount. None of the current commission, or Kirk McGregor were a part of that process. Skip Brandt however, was a commissioner that allowed Simmons Sanitation to receive the same increase option we were awarded at arbitration. At no time prior to our arbitration did Simmons Sanitation ask or make known he needed more money. Simmons somehow convince Idaho County he deserved not only an increase, but a back charge from the time we received our 2006-2007 increase.

None of the information Skip Brandt provided on his two worksheet about Walco, was information listed as factors in the RFP specifications. So it is unclear why he would list it, or any other information on the sheet, unless he hoped it would reflect negatively on us.

7. Also on this worksheet was a comparison showing Simmons' supposed lower fuel surcharge. While Skip Brandt does add a possible extra annual tonnage cap, he notes Simmons would not offer an in-county transfer station but assigns no dollar figure for Simmons not offering a transfer station. Having a transfer station was a requirement of the RFP and of our County Ordinances, so it should have been assigned a dollar figure that was added to his monthly costs. In other words, we were offering a valuable service that we got no credit for on this sheet.

8. No matter, to my knowledge, Skip Brandt passed this worksheet out to people, went over the information a second time at the November 23, 2012 meeting and even handed it to various news writers. The effects have been evident. News articles have been biased against us, and incorrectly so. Due to the lack of clarity of this worksheet news reporters even made errors off this sheet. We advised one of their mistake they refused to do a reprint. They said they would get the information correct in the next article. It has never been correct to date.

9. I think all prospective jurors from Idaho County would be biased because all of them have already been affected by the Idaho County Commissioner's solid waste decision. There have been several well-publicized solid waste meetings and continues to be meetings on the issues as well as news stories and letters to the editor.

10. Another reason all jurors would be biased, is that an Idaho County resident will be asked to make a trial decision that could potentially increase their taxes, their neighbors'

taxes, and their family members' taxes. With this and the county's continued publicity in mind, I don't think they can be objective.

11. Also, Simmons does not do the volume of business in Idaho County that Walco did. Businesses that Walco did not use because local competitors gave better deals would be business owners and employees that would be biased against Walco. Simmons would face the issue of business owners or employees that would be prejudiced against him because they had lost money because Walco was not using them any longer.

12. 85% of the land is federally owned, so Idaho County is a large county but a small community. Everyone knows everyone. Family ties, religious ties, friendship ties, work relationships can't be avoided in selecting a truly unbiased jury member.

13. I do believe, based on the comments of those individuals that jurors may decide in Walco's favor. However, as a taxpayer myself, I understand the tax burden in our county from the cut in timber funds, and I hear the concerns of many past customers who believe the Simmons Sanitation contract should be revoked, but who do not want an increase in taxes from a damage award.

14. The problem is that Walco has sustained losses that are unrecoverable if damages are not awarded. In other words, even if a jury finds our case compelling and decides in our favor such that the contract with Simmons was reversed, we still have both monetary and employee losses that we believe the County has the responsibility to reimburse us for because of illegal maneuverings. If we are faced with jurors who are most concerned about their individual tax responsibility or influenced by their small community ties, then none of the parties will get a fair trial. Because of all the people who have expressed concerns

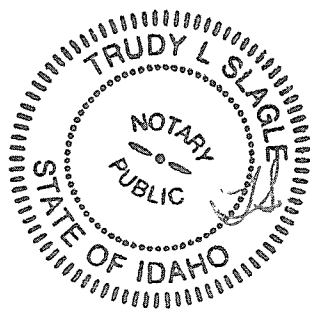
regarding tax increases combined with the other issues, I believe a jury trial in another county like Nez Perce or Latah would be the most fair location for all parties to this suit.

DATED this 10 day of September, 2013.

Marietta Holman

MARIETTA HOLMAN

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of September 2013.



Trudy L. Slagle

Notary Public for Idaho

Residing at: Grangeville  
Meridian

My Commission Expires:

3-17-15

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of September, 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Bentley G. Stromberg  
CLEMENTS, BROWN & McNICHOLS, PA  
321 13<sup>th</sup> Street  
Lewiston, ID 83501  
(208) 743-6538

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile (208) 746-0753

David R. Risley  
RISLEY LAW OFFICE, PLLC  
P.O. Box 1247  
1443 Idaho Street  
Lewiston, ID 83501

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile (208) 743-5307

  
\_\_\_\_\_  
LINDA HIGGINS

# SKIP BRANDT 1<sup>ST</sup> COMPARISON SHEET



Walco

2002 Contract----- (monthly base) \$ 35,180.00

2006 Arbitration

2008 Contract----- (monthly base) \$53,794.00

2012 End of ten year contract/ proposed new 10 year contract (monthly base) \$ 60,823.35

Plus fuel surcharge – using Walco's reported numbers (Av. Monthly pmt)     \$ 3,386.56

\$ 64,209.91

New proposal (base including fuel surcharge) **\$ 87,000.00**

Monthly difference----- \$ 22,790.09

Annual difference----- \$273,481.08

\$686,166.72 (annual) start to mid. contract     \$ 770,518.00 =     12.3% increase

\$770,518.92 (annual) old contract –new proposal     \$1,044,000.00 =     35.5% increase

\$686,166.72 (annual) start of old contract – new p \$1,044,000.00 =     52.1% increase

---

Simmons (Walco land) Proposal

Proposal----- (monthly base) **\$ 77,202.00**

Fuel surcharge (given by Walco)     \$ 7,900.00

**\$ 85,102.00**

Walco average annual tonnage     4,630.32 tons

Simmon's tonnage limit     4,500.00 tons

Possible extra tonnage charge     130.32 tons

Extra tonnage cost     \$ 74.00 per ton

Possible extra annual cost     \$ 9643.68/12     (monthly tonnage cost \$ 803.64)

Simmon's extended contract proposal ( possible ) cost     **\$ 85,605.64**

\*\* Note     ( 6 qrts fuel surcharge reports / 1 ½ year of Walco's numbers)

# SKIP BRANDT REVISED COMPARISON SHEET

Walco

2002 Contract \_\_\_\_\_ (monthly base) \$ 35,180.00

2006 Arbitration -----asked for \$96,000 (but didn't get it)

2008 Contract----- (monthly base) \$53,794.00

2012 End of ten year contract/ proposed new 10 year contract (monthly base)	\$ 60,823.35
Plus fuel surcharge – using Walco’s reported numbers (Av. Monthly pmt)	<u>\$ 3,386.56</u>
	\$ 64,209.91

New proposal (base including fuel surcharge) \$ 87,000.00

Monthly difference \$ 22,790.09

Annual difference \$273,481.08

\$686,166.72 (annual) start to mid. contract      \$ 770,518.00 =      12.3% increase

\$770,518.92 (annual) old contract - new proposal \$1,044,000.00 = 35.5% increase

\$686,166.72 (annual) start of old contract – new p \$1,044,000.00 = 52.1% increase

### Simmons (Walco land) Proposal

Proposal------(monthly base) \$ 77,202.00

Fuel surcharge (given by Walco)	\$ 7,900.00
---------------------------------	-------------

Fuel surcharge (given by Simmons)	<u>\$ 5129.49</u>
-----------------------------------	-------------------

\$ 85,102.00

Walco average annual tonnage 4,630.32 tons

Simmon's tonnage limit 4,500.00 tons

Possible extra tonnage charge	130.32 tons
-------------------------------	-------------

Extra tonnage cost	<u>\$ 74.00 per ton</u>	<u>\$ 815.15</u>
--------------------	-------------------------	------------------

Possible extra <u>annual</u> cost	\$ 9643.68 / 12 (monthly tonnage cost)	<u>\$ 815.15</u>
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Simmon's extended contract proposal ( possible ) cost	\$ 83,146.64	\$ 85,605.64
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Simmon's - tonnage cap - no transfer-station -

\*\* Note ( 6 qtrs fuel surcharge reports / 1 ½ year of Walco's numbers)